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A
General CHARGE
TO ALL
Grand Juries,
And other JURIES:

With ADVICE to those of
Life and Death, *Nisi Prius*, &c.

Collected and Publish'd
For the Ease of Justices of the Peace;
quicker Dispatch of Business; better
Information of Jurors; and common
Benefit of all Freeholders, who shall
be called to so Honourable and Neces-
sary a Service.

To which is prefix'd,
A Discourse of the Antiquity, Power,
and Duty of JURIES; With an Exhortation
to their due Performance thereof.

By Sir JAMES ASTRY.

The Second EDITION: Corrected, and much En-
larg'd, with the Laws of the Crown, Indictments,
Presentments, &c.

L O N D O N:
Printed for W. MEARS, at the Lamb, without Temple Bar.
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T H E
P R E F A C E.

THE following Charge to grand Juries was written and delivered some Tears ago by Sir James Astry, Kt. a very learned and ingenious Gentleman in the Commission of the Peace for the County of Bedford; and is so very excellent, that 'tis highly evident, if it be not the Foundation of all other Charges of this Nature, it at least bath stirr'd up other Justices to follow the Example of this Great Man, and to emulate in the discharge of their Duties at the Quarter Sessions of the Peace.

But though its Composition be so truly meriting; yet, thro' the Negligence of some, and by the Deaths

The P R E F A C E.

of others, who were the Proprietors of what is now banded to the Publick, and reviv'd from Obscurity, this General Charge hath had a Suspension from Day Light for almost twenty Tears past ; such is oftentimes the Fate of the best Performances, whilst others inferior, by a contrary Management, get the upper Hand of them.

I have now corrected this Piece for further Editions, and considerably enlarged it, from our Crown-Laws, particularly in Cases of Treason, Murder, Felony, Riots, &c. And supply'd some Omissions, which at first accidentally slipp'd the Ingenious Author : Several new Heads are inserted, relating to Gaming Houses, Bawdy Houses, Drunkenness, and Profaneness, to render the same equally useful to the Justices of Peace, and Furies of the great City of London, and other large Towns, as well as in the Country.

To

THE PREFACE.

To make it yet further acceptable, I have added the particular Proceedings of Justices in the Quarter Sessions; Bills of Indictment for Crimes, which are to be found by the Grand Jury; and a general Presentment of many Kinds of Offences, which is not only new, but of universal Use. And I do assure my Readers, that for the Additions I have ventured to make, I am no ways indebted to the modern Charges of Mr. Bulstrode, or any others, however good in their Kind, but to our many Law Books on the Subject, and my own Industry and Application.

The Penitential

I am made to you further
I have added the
for Proceedings of
Quarter Session
sent for Court
found in the
General Proclamation
of Orders which is not only
but of universal
for my Reader
dition I have returned to make
our no way indebted to the
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TO THE
FREEHOLDERS

Of the County of

B E D F O R D,

And all others in

GREAT-BRITAIN.

HAVING had the Honour to serve my Country under three Kings, and the Happiness to survive to that more glorious Reign of our present Gracious Sovereign; I have often had the Opportunity to observe the great Delays and Inconveniences that have been occasion'd by too long and tedious Charges, given at the General Assizes, or Quarterly Sessions of the Peace; and I need not remind some, *Asply contra Wadendon, Bedford Ass.* even in this County, who have severely felt the fatal Influence thereof on their Cause and Purfes. Mr. Babington, who *Mr. J. Rely.* fat

sat at the Feet of our *English Gamaliels* forty five Years in one Circuit, is of Opinion, That even those of the learned Judges were better omitted, and that their Charges to the Grand Juries are more to inform the whole Country, and to shew their own Learning, and the Law therein, than that the Grand Jury should take them into Consideration, or make it the Duty of their Inquiry. But I must beg Leave to dissent from his Opinion in this, as well as some other Things, having been often extreamly well pleas'd, and edified with the learned and eloquent Discourses of some modern Oracles of the Law, who take Care to proportion their Rhetorick according to the Contingency of their Business. I will not presume either to find Fault with my Superiors, or inform my Equals, but write chiefly for the Use and Instruction of such honest, plain Freeholders, who will not spare Money to buy larger Books, or want Leisure to read them.

Britton 9.
Bracton l. 3.
c. 1.

That the Charge was anciently given in Writing to the Jurors, appears both by *Bracton* and *Britton*, who lived in the Time of *Hen. 3.* That the Jury might easier remember it, their Minds be refresh'd, and themselves, perhaps, better edified. The Justices in *Eyre*, that formerly were *Itinerant* over the Kingdom, (in

(in whose Rooms our learned Judges succeed) ever gave their Charge, and whatever was inquirable by the *Grand Jurors*, in Writing. It was a Complaint, as ancient as the Reign of *Hen. 7.* That the Office of Justice of Peace was a great Burthen, in Regard they were charg'd with the Execution of so many Statute-Laws; whereas the Statutes touching Riots, Forceable Entries, Labourers and Liveries, were, as one observes, the greatest Part of their Business. But how prodigiously they have increas'd since, and yearly continue to do so, needs no other Evidence than the Statutes themselves at large. If therefore it were thought an Ease in that Infancy of Statute Laws, to reduce the Substance of them into Writing, for the Benefit of Juries; how much more necessary must it needs be, now they are grown so voluminous, for the Ease of Justices, as well as better Information of other Freeholders, who serve their Country on the *Grand* and *Petit-Jury*. But I use not these Arguments to the Gentlemen of this County, who have, for some Years past, judiciously made Use of this ancient and laudable Method. My only Design in Printing them, is to encourage Strangers to follow so good an Example; and that so publick a Good might be, at a small Charge, as publickly communicated

cated to those who may hereafter be call'd to serve their Country, in that honourable and necessary Imployment.

The Way of Trial by *Juries*, was contemporary with the Foundations of the Government, and has continued ever since under all the Revolutions of Times. *Ad Quæstionem Juris respondent Judices, ad Quæstionem Facti respondent Juratores*, has always been a fundamental Maxim in our Government. That it is of *English Saxon* Descent, appears by the Laws of King *Ethelred. c. 4.* In all Hundreds let Assemblies be held, and 12 Freemen, the most ancient, together shall swear not to condemn the Innocent, or absolve the Guilty. But Sir H. Spelman says, *Certè ipsius Ethelredi Leges quæ prostant, Ordaliū in Hundredo solummodo Indicant.* But it was rarely made Use of, till those Superstitious Trials by Ordeal, &c. were abrogated by *Hen. 3.*

It is the great Happiness, Freedom and Liberty of the *English* Nation, that in all Offences Criminal, each Freeman shall receive his Trial *per Pares*, by his Equals. No Person can be convicted or attainted, or have Judgment of Life, or Member upon any Criminal Accusation, but there must be two Juries pass upon him, at least 24 Persons, the one a Grand Jury, (*ex parte Regis*) to present the Offence fit for a Trial; the other a petit or

Lamb. in
verb. Cen-
sur.

Spel. Tit.
Jur. &
Jud. Dei.

or lesser Jury, *inter Regem & personam accusatam*, to try the Truth of that Presentment. The Grand Jury coming from all Parts of the Country, the other Jury *de ipso Vicinetto*, of the very Neighbourhood where the Offence was committed.

The first is called a *Grand Jury*, either in respect of their Number being above Twelve, (the general Certainty of all other Juries) and may be as many as the Court please, but usually exceed not Twenty-three, and unless Twelve thereof agree, they cannot give a legal Verdict; for I have read of a Judge that was hang'd for giving Judgment on the Verdict of Eleven Jury-men. But in the petit Jury, every Man of the Twelve *Mir. 296.* must agree before they can give a Verdict. Or else they are called *Grand* in respect of the Quality of their Persons, or Greatness of their Estates; for in ancient Time, the Jury as well in Common-Pleas, as Pleas of the Crown, were Twelve Knights. Or lastly, That *per* *Glanvil* *Excellentiam* they are styled *Juratores* *L. 2. c. 14.* *pro Domino Rege pro corpore com'.* *Bracton p. 116.* And as the Commons in Parliament are to the whole Kingdom, they have an unlimited Power, to present all Offences committed in their Country, that are *contra Pacem, Coronam, & Dignitatem Regis*; against either Statute or Common Law.

Law. They are the great or grand Spring, or *Primum Mobile* of the Court, that gives Motion to all the other Wheels; their Presentments being the Key that opens and shuts the Proceedings of the Court in every Offence. Therefore the Law of *England* takes Care, that Juries must consist of such Persons, that are *Probi & Legales homines*, lawfully impanel'd and return'd by the Sheriff, and neither attainted nor outlawed in any personal Action. They must likewise be sufficient *Respectu Censu*, which is, that every one must have 40 s. *per Annum*, in Freehold. It is the general Course of the World to esteem Men according to their Estates, for *Quantum quisque sua nummorum habet in Arca, Tantum habet & fidei*. And Jurors that have Estates to lose, will be afraid to commit Perjury. The Defect in Sheriffs not returning Men of better Estates and Abilities, gave Occasion to a Gentleman of great Experience to affirm, that the Jurors of *England*, especially in the Circuits, are, for the most Part, the very Scandal of the Laws practical, who seldom serve but to serve a Turn, to obey a Superiour, pleasure a Friend, or to help away (in a Hurry) a quick Dispatch of Practice; and that it is hard to get an unbiaffed Jury; some serving, had more need to be relieved by the

Eight

Eight Pence than Discretion to sift out the Truth of the Fact. *Pudet hæc Opprobria nobis, Et dici potuisse & non potuisse refelli.* The Fault is not in the Laws of *England*, but the male Execution of them. In former Times, when Estates of Inheritance were in few Mens Hands, such as had 40 s. *per Ann.* were found sufficient to serve on Juries; and in *Hen.* the Third's Time One Shilling was as much as Forty Shillings now. After Estates of Inheritance coming in greater measure to the Vulgar, it was by the Statute of 27 *Eliz. cap. 6.* made 4 l. *per Ann.* by the 16th and 17th *Car. 2. cap. 3.* 20 l. a Year; and now by the 4th and 5th of *William and Mary*, every Juror between Party and Party, must have 10 l. *per Annum*; and I hope the Wisdom of the Parliament will extend the same to the Juries in Criminal Causes also, that such Scandalous, though just Reflections, may in great measure be obviated, and the Life of a Subject may be valued at above 40 Marks. Every Jury Man must likewise be sufficient, *Respectu Rationis*, no Ideot, Lunatick, &c.

Jurors are return'd by the Sheriff, by Virtue of a Precept to that Purpose, against which at Common Law both King and Subject had two lawful Challenges, peremptory, and upon Cause shewed. But though the Peremptory Challenge

Challenge remaineth for the Party, yet it is abridged by the Statute of 32 Hen. 8. *cap.* 30. for whereas at Common Law he might have challenged 35, without Cause shewed, it is now reduced to 20; and if he challenge beyond that Number, it is a waving his Trial; but he may challenge as many as he please for Cause shewn, which shall be tried by two of them that were before impanelled, to be appointed by the Court.

Foreigners are to have a peculiar Way of Trial, *de Medietate Lingua*, six English and six Foreigners, if there be so many in the Place, and these may be of any Nation, but the Party must pray such Jury.

It is a good Challenge to a Juror, that he was one of the Party's Indictors, for he shall be presumed not to change his Mind.

Inf.
155, &c.
5 H. 7. And Challenge to the Jury (which is an Exception against them) is of Two Kinds, *viz.* to the Array, and the Polls. A Challenge to the Array is at once to except against all the Persons impanelled: And there may be a principal Cause of Challenge to the Array, and a Challenge to the Favour. A principal Cause, in respect of Partiality or Default of the Sheriff, &c. and not in respect of the Persons returned. Partiality in the Sheriff, may be by Reason of Kindred
or

or Affinity to the Plaintiff or Defendant; or if one of the Jury is return'd at the Nomination of the Plaintiff or Defendant. Exception to the Favour, is where the Plaintiff or Defendant is Tenant to the Sheriff; or if the Sheriff's Son hath married the Daughter of the Party, &c. A Challenge to the Polls, is an Exception against one or more particular Jurors returned; and this in Treason or Felony may be peremptory, without shewing any Cause, in Favour of Life. If either of the Parties is of Affinity to a Juror, the Juror hath given a Verdict before in the same Cause, if after he is returned, he eats and drinks at the Charge of either Party; if the Plaintiff, &c. be his Master, or the Juror hath any Interest in the Thing demanded; if the Juror is convicted and attainted of Treason, Felony, Perjury, adjudg'd to the Pillory, be outlaw'd, &c. These are all principal Challenges.

At *Michaelmas* Sessions yearly, Constables of Hundreds, &c. are to give in ^{7 & 8} Lists (within their respective Limits) ^{W. 3.} to the Justices of Peace, of the Names and Places of Habitation of all Persons qualified to serve on Juries, between the Age of 21 and 70, by late Statutes. ^{3 & 4.}

But Aliens, Apothecaries, Butchers, Clergymen, Infants, &c. may not serve on Juries.

Justices

13 Hen. 1.

cap. 1.

3 Hen. 7.

Justices of Peace may enquire of Concealments by former Juries, and punish them by Amercement ; touching which Matter, consider,

1. The Matters which they be punish'd for the Concealment of, must be such as may be presented before the Justices.

2. The Concealments of the Inquest taken before Justices out of Sessions, or before Coroners, or in Leets, or in the Sheriffs Turn, may be enquired of before them in the Sessions.

3. Every Juror which shall enquire of such Concealments, must have 4c s. Freehold, *per Annum*.

4. Such enquiring must be of Concealments by former Juries, of Matters or Bills presented before them.

5. Such Enquiry must be made within the Year after such Concealment.

6. The Amercement must be reasonable, altho' it be directed to be by Discretion.

7. The Inquest ought to consist of as many, or more than the first Inquest did.

8. Notwithstanding any Complaint, yet the Justices may take or refuse such Inquest as they see Cause.

9. Such Amercement must be set in full Sessions.

This Discourse, and the following Charge being designed chiefly for the Use

Use and Information of the Grand Jurors, at the Assizes, or Sessions of the Peace: I think it necessary to set down their Oath *in Terminis*, and afterwards to explain the Nature and Extent thereof, in the several Branches of their Duty.

YOU shall diligently enquire, and true Presentment make, of all such Things and Matters as shall be given you in Charge, or shall come to your Knowledge, concerning this present Service. The King's Counsel, your Fellows, and your own, you shall well and truly keep secret. You shall present nothing for Malice, or evil Will you bear to any Person; neither shall you leave any Thing unpresented, for Love, Favour, Affection, Reward, or any Hopes thereof; but in all Things that shall concern this present Service, you shall present the Truth, the whole Truth, and nothing else but the Truth, according to the best of your Skill and Knowledge: So God you help.

In the first Place you see by the Oath, they are sworn to be diligent in their Enquiry, not to be slothful, or negligent, being quickned by their Oath: This Diligence is to be exercised in an Enquiry, and this Enquiry is to be made amongst themselves, in what they know of their own Knowledge, or shall

be brought unto them by the Testimony of others. As to the Matter of their Enquiry, which next follows in the Oath, *it is of all such Things and Matters as shall be given them in Charge.* These Words are general (*Things and Matters*) and certainly in the clearest Understanding, are intended, the general Heads of all Offences by them enquirable; As, all Murthers, and that comprehends all manner of unlawful Killing: All Felonies, and that comprehends all manner of Stealing; and so of other general Heads of Offences, here enquirable, as Perjuries, Forgeries, Misdemeanors, &c. Now although the learned Judge doth often in his Charge, when he speaks of Murder, declare the several Species and Differences in that Offence by Law; and so of Felony, the several Manners of Felonies, simple and compound; and so of other Offences, the Words of the Oath do no Way oblige them by reason of such a Charge, to determine (by their Presentment) every Nicety in Law, that may arise upon every Fact before them, otherwise than in that Form and Manner; the Court and the King's Council have framed and presented it to their Enquiry, where the single Fact of unlawful killing another, &c. by the Hands of such a one, is proved unto them so far, as in their Judgments it is fit Matter of Accusation,

Accusation, to bring the whole Matter of Fact, and all that may depend upon it, to a farther and more full Examination. Then it follows in the Oath, [*The King's Council, their Fellows, and their own, they shall keep secret.*] By the King's Council is to be understood any Directions the Judge shall, in Court, give unto them, in any Matter before them; as also the Evidence of Witnesses, that shall be produced to them on the King's Behalf, in any Fact, (for no other Witnesses must be heard by them) and likewise such Counsellors learned in the Law, as shall manage the Matter on the King's Behalf, (for no other Council must be heard by them against the Bill) none of this must be revealed, or discovered by the *Grand Jurors*, but faithfully kept Secret, according to their Oath, from the Party concern'd, his Friends, and all others, except the Court demand any Question from them upon their Evidence; so likewise must they *keep their fellow Jurors Counsel, and their own*; that is, they are not to discover what any one of themselves have together counselled, advised, or debated, in the Business before them, against such a Person. They are the King's great Council upon this Account; and all such great Councils, where the King is so much concerned, take an Oath of Secrecy; for otherwise,

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by revealing such Counsels, a Traytor, a Murtherer, and the greatest Felon, may escape, to the endangering of the King and Kingdom ; and this Offence, in ancient Time, was holden for Treason or Felony : But the Lord Coke says, in his third *Institutes*, fol. 107. *Certain it is, that such Discovery is accompanied with Perjury, and a great Misprision, to be punish'd by Fine and Imprisonment. And it is well provided by the Oath, that each Juror is sworn to keep his own Counsel also ; for he that will not keep his own Secrets, will hardly keep anothers.*

So much for the Matter of the Oath, what they are to do : It follows in the Oath, with what Integrity they ought to do their Duty, *They are to present no Person for any Offence, thro' Malice they have to the Person, nor omit any meerly for any Favour they have for the Person.* This is so plain, it needs nothing but Practice ; these two seem very easy, but, indeed, are very difficult to Flesh and Blood, not to take Revenge when one hath Power to do it ; and not to shew Favour, when there is Power and Opportunity to express it.

Malice and Favour (two great Enemies to Justice) are to be excluded all Courts of Justice, as too partial ; and therefore the Oath well concludes, *That they shall present*

present the Truth, the whole Truth, and nothing but the Truth. The Truth, that is, Truth sufficient to make an Accusation against a nocent Person ; *The whole Truth*, not concealing any Part of it wilfully, but so presenting it, that the whole Matter of Fact may come in Question to another Jury. And as there must not be in the Grand Jury *Suppressio Veri*, a suppressing or lessening the Truth ; so there must not be *Expressio Falsi*, a false Accusation ; and therefore it follows in the Oaths, *And nothing but the Truth* ; that is, no known Falstiy, no false Accusation against any Person must be presented, whereby to bring an innocent Person to Tryal, where there is nothing of Fact to be prov'd against him, or any probable Accusation. If these three *Truths*, in this Oath mentioned, are not to be understood in this legal Sense, and according to the common Practice of the legal Proceedings in these Cases ; I must confess, I am to be instructed how any *Grand Juror* (that hears but one Side) can satisfy his Conscience, that in a plain, literal, and grammatical Sense, he can swear, that every Presentment and Indictment, that comes from the *Grand Jury*, contains in it the *Truth*, the *whole Truth*, and *nothing but the Truth*. And this is declared by the last Words of the Oath [*according to the best of their*

Skill and Knowledge] for this must be understood, *Skill and Knowledge* in the Law and Fact, as to the Practice and Nature of the Proceedings of the Law in such Cases; for it is rather *Discretia Legis*, than *Hominis*.

Mr. *Babington* before mentioned, who was a very ancient Man, and long experienced in Tryals of Criminal Causes, has wrote a large Treatise intituled, *Advice to Grand Juries in Cases of Blood*. Wherein he asserts and proves by Law and Reason, That it is the Duty of Grand Jurors in all Cases of Blood, touching the Death of any reasonable Creature, by Violence, or by the Hand or Act of any other reasonable Creature, where the Bill of Indictment is brought unto them for Murther, in case they find upon the Evidence any Probability, that the Person said to be kill'd in the Indictment, was slain by the Person charged to do it in the Indictment, to put *Billa vera* to that Indictment, without foreclosing the Court, by judging amongst themselves the Points of Law that may arise in that Case, as whether it be Murther, Manslaughter, at Common Law, or upon the Statute, *Se def. per Infortunium*, justifiable or otherwise; none of these Special Matters being to be found by them, who are but Inquisitors for the King, not *Triers* of the Offence,

fence ; hearing but Witnesses on one Side, and whose Presentment or Verdict is not final, but must be put to Issue betwixt the King and the Party, to be try'd by another Jury, whether there be Truth in it, or no. This Book was licensed by the Lord Keeper North, has been since approv'd of by all the learned Judges, and the Substance thereof, as to this Point, often given in Charge by them in their Circuits ; I shall not therefore scruple to borrow your Information from it, esteeming that Man a happy Plagiary, who can steal *Wisdom* from *Solomon*.

The Reason why a Petit Jury, or Jury of Life and Death may extenuate an Offence, and make it less than the Grand Jury is, because (hearing of both Sides) they may enquire of Circumstances which a Grand Jury cannot. Besides, as the Lord Coke informs us : *An Indictment is no Part of the Tryal, but an Information, or Declaration for the King ; and the Evidence of Witnesses to a Grand Jury, is no Part of the Tryal : For by Law the Tryal in that is not by Witnesses, but by Verdict of 12 Men, and there is a manifest Diversity between the Evidence to a Jury, and a Tryal by a Jury. If the Indictment were Part of the Tryal, then ought he that is a Nobleman, and Lord of Parliament, to be indicted by his Peers ; but the Indictment* Coke 3 Inst. fol. 26. 1 Inst. Sect. 194. Fortescue c. 26. Stamf. l. 2. fol. 90.

against a Peer of the Realm is always found by Freeholders, and not by Peers.

It is not material in all Cases of Murther, that express Malice be proved to the Jury of Life and Death, tho' they are to convict the Prisoner ; much less (or not at all) is it material to prove it to the Grand Jury, who are but to present it, not to the Jury of Life and Death in any Case, where the Law only implies it, for such Proof is in the Judgment of the Court, and not in the Jury, which the Jury must submit unto, and be overrul'd in ; and much less is this implied Malice to be proved to the Grand Jurors ; for it lies not in the Proof of Witnesses, but in the Construction of the Law ; and yet the Grand Jury must find those Words, *ex Malitiâ præcogitata, &c.* as if they were prov'd expressly unto them by Witnesses, or otherwise the Jurors of Life and Death cannot enquire of the Offence, as Murther ; for the Definition thereof is *a wilful killing of a Man upon Malice forethought (but this must be either expressed in Proof, or implied by Law :)* And the Jury of Life and Death (in such a Case) must find those Words expressly, altho' they cannot be prov'd unto them, but are only imply'd and supply'd by Law ; or else the Party accused can never be convicted of Murther, as might be instanced in very

ry many Cafes, of which take thefe following, not mention'd in the Charge.

One in Prison kills his Keeper, and makes an Escape, where no Malice or falling out can be prov'd: A Stranger, or other Person, kills a Watchman, Conftable, or other Officer, that hath a good Warrant to ftay him, tho' perhaps there be no Cause for his Stay, being an innocent Person, or another Person, and not the fame intended; here is no Malice, and yet this is Murther *ex Malitiâ præcogitata*, &c. One goes into the Street or Highway, and kills the firft Man he meets, altho' he never faw him before. Two Perfons are fighting a Duel together upon cool Blood, upon premeditate Malice, and a third Person comes to part them, and is kill'd by one of them; this is Murther *ex Malitiâ præcogitata* in him that kill'd him, (if not in both) altho' neither of them ever faw him before, and yet no Malice to this Man. One wilfully kicks or wounds a Woman great with Child, whereby the Child is wounded in her; ſhe is afterwards fafely delivered of the Child, (the Child alive) the Wound or Bruife by the Kick or Blow, appearing upon the Child mortally, whereof afterwards it dies; this is Murther *ex Malitiâ præcogitata*: And yet what Malice had this Man to the Child he never faw? Divers Perfons are unlawfully

unlawfully hunting in a Park, one of them kills the Keeper, (after the Keeper had duly, according to his Office, admonished him to stand) all the rest of the Company tho' a Mile off in the said Park, and out of Sight, are guilty of wilful Murther of the said Keeper, and yet nothing of Malice can be expressly proved. One is shooting at a Cock or Hen, and kills another Person, this is Murther, his Act was unlawful. One finding a Gun or Pistol charged, lying upon a Table or other Place, takes it up into his Hand, draws up the Cock, (not thinking it to be charged) and in a jesting Way gives Fire at one in the Room, the Gun goes off, and kills him; this is Murther, he had nothing to do to meddle with the Gun, it was out of his Calling, and none of his, he must jest at his Peril. A drunken Man gets upon a Horse, (which a sober Man might ride quietly) and in a Fair or Market, occasions the Horse to run over another Person, and kills him, this is Murther. *A.* gives *B.* the Lie, with many other provoking Words, as Coward, Thief, &c. whereupon *B.* strikes *A.* and kills him, this is Murther, *ex Malitiâ*, &c. Words are not a sufficient Provocation for one to kill another. If one killeth another, without any Provocation (actual) of the Part
of

of him that was slain ; this is Murther, the Law implieth Malice.

If one meaning to steal a Deer in a Park, Shoots at the Deer, and by Glance of the Arrow kills a Boy that is hid in a Bush ; this is Murther, the Act being unlawful, though here was no Intent to hurt the Boy, knowing nothing of his being there.

If a Woman being quick with Child, do wilfully with a Potion, or otherwise, intend the Destruction of the Child in her Womb, the Child being born alive, dieth of the Potion, Battery, or other Cause ; this is Murther.

If one keep a Mastiff-Dog, that is used to bite People, near the Common Highway ; or Bull or Beast, that hath hurt any one (after Notice) they kill any one, that will be Murther in the Owner, although not present when the Fact was done ; and yet in this, and the other precedent Cases, here is no express Malice to be proved, but what the Law construes to be so : Which can in no Sense be left to the Grand Jury to be Judges of ; but in all these Cases, and many more, must be ruled and over-ruled by the Judgment of the Court, in Point of Law.

Altho' no Malice in these Cases can be proved to the Grand or Petit Jury ; yet the Indictment must be expressly drawn,

drawn, and so found by the Grand Jury, with these Words to make it Murther, *ex Malitiâ suâ præcogitatâ, &c.*

And that this may be yet more evident, I will now, in *Terminis*, set down the Oath of the Jurors of Life and Death, by which it appears, that they only stand charg'd with the Prisoner, (as it is expressed in the Oath) and the Grand Jury only with the Accusation against him. [*You shall well and truly try, and true Deliverance make, between our Sovereign Lord the King, and the Prisoner at the Bar, (whom you shall have in Charge) and a true Verdict give according to your Evidence: So help you God.*] Which is to be formally and legally drawn up, in the Nature of a Declaration at Law, at the King's Suit, the King being Plaintiff, and the Prisoner Defendant; which Prisoner upon his Arraignment either confesseth, and then he is convicted without hearing of any Evidence, or otherwise pleads *Not Guilty* to it, to which the King (by the Clerk of the Crown) joins Issue by *Culprit*, viz. *that he is ready to prove him Guilty*. And so the Issue being thus join'd, Evidence for the King is given against him upon Oath, to which he makes his Defence in Person, or by his Council (if any Point of Law arise to which he desires Council; and the Court approve of it,

it, the Judge being as well Council for the Prisoner as the King) calls his Witnesses (if he have any) who speak upon their Credits, and not upon their Oaths, which is much for the Advantage of the Prisoner, the Law presuming (in Favour of Life) the Affirmative Proof to be so clear against the Prisoner, that nothing in the Negative can be prov'd (upon Oath) against it. And that is one Reason why regularly he cannot have Council: The other Reason is, the Court ought to see the Indictment, Trial, and other Proceedings good in Law, lest by an erroneous Judgment, they attaint the Prisoner. But my Lord Coke, in another Place says, *Furato creditur in Judio; and to say the Truth, we never read in any Act of Parliament, ancient Author, Book, Case or Record, that in criminal Cases the Party accused, should not have Witnesses sworn for him, and therefore there is not so much as Scintilla Juris against it.* Of which Opinion also is my Lord Chief Justice Hale in his Pleas of the Crown, notwithstanding the Practice to the contrary. After a full Trial of what can be said and prov'd on both Sides, and a convenient Time taken by the Jury to consider of it, they bring in their Verdict; either convict or acquit him; either find him Guilty according to the Indictment found by the Grand Jury,

3 Inst. 137.

fol. 29.

Coke 3.

Inst. fol. 79.

Jury, by hearing of one Side, or specially, as they find the Fact, by hearing of both Sides; for they are not bound strictly to the Matter and Form of the Indictment, as the *Grand Jury* have found it; for they may by Law extenuate it to the least Degree of Offence, that can be in that kind; but they cannot aggravate it, or exceed above what the *Grand Jury* have found; for if they might do so, they would become Accusers, as well as Tryers, which would be against the Law and Liberty of the Subject: And therefore the *Grand Jurors* have the greater Reason to enlarge their Declaration or Accusation for the King, as far as the Law will heighten all Offences in Blood, since the other Jury have so much Liberty to extenuate the Crime, whatever the Accusation is.

Having spoken of *Grand* and *Petit Juries*, I shall now, according to my Title, give some Advice to others also. There is a Maxim, and an old Custom in the Law, that the Jury shall not eat nor drink after they be sworn, till they have given their Verdict, without the Assent and Licence of the Justices; and that is ordain'd by the Law, for avoiding divers Inconveniences that might follow thereupon; and that especially if they should eat and drink at the Cost of the Partics, and therefore if they do
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so, it may be laid in Arrest of Judgment; but with the Assent of the Justices they may both eat and drink, as if any of the Jurors fall sick before they be agreed of their Verdict, so soon that he may not commune of the Verdict, then, by the Assent of the Justices, he may have Meat or Drink, and such other Things as be necessary for him. And if the Case so happen, that the Jury can in no wise agree in their Verdict, as if one of the Jurors knoweth, in his own Conscience, the Thing to be false, which the other Jurors affirm to be true, and so he will not agree with them in giving a false Verdict, and this appeareth to the Justices upon Examination, the Justices may, in such Case, suffer the Jury to have both Meat and Drink, for a Time, to see whether they will agree; and if they will in no wise agree, the Justices may award a new Inquest, and by setting a Fine upon them, that they shall find in Default, or otherwise as they shall think fit, like as they may do if one of the Jury die before the Verdict. If the Jury after the Evidence given unto them at the Bar, do at their own Charges eat and drink, it is fineable, but it shall not avoid the Verdict; but if before they are agreed on their Verdict, they eat or drink at the Charge of the Plaintiff, if the Verdict be given for him,

it

*Doff. &
Stud. 158.
Inst.*

it shall avoid the Verdict; but if it be given for the Defendant, it shall not avoid it, & sic è converso. But if after they are agreed on their Verdict, they eat and drink at the Charge of him for whom they do pass, it shall not avoid the Verdict. To give the Jury Money makes their Verdict void.

Leon. I.
part 18.

By the Law of England, a Jury after their Evidence given upon the Issue, ought to be kept together, in some convenient Place, without Meat or Drink, Fire or Candle, and without Speech with any, unless it be the Bailiff, and with him only, if they be agreed. After they are agreed, they may in Causes between Party and Party give a Verdict, and if the Court be risen, give a privy Verdict before any of the Judges of the Court, and then they may eat and drink, and the next Morning in open Court, they may either affirm, or alter their privy Verdict, and that which is given in Court shall stand. But in criminal Cases of Life or Member, the Jury can give no privy Verdict, but they must give it openly in Court.

Br. Enquest
6th, 47,
39, &c.

Neither can a Jury sworn and charg'd in the Case of Life or Member, be discharged by the Court, or any other, but they ought to give a Verdict. And the King cannot be Non-suit, for He is in Judgment of Law ever present in Court; but

But a common Person may be Non-suit:
And in civil Actions, the Justices, upon
Cause, may discharge the Jury.

After a Jury of Life and Death have
been sworn, and charg'd with the Pri-
soners arraign'd, the Judges having been
inform'd, that it was a Jury pack'd to
favour some Prisoner, have sometimes
discharg'd the Jury, and made the She-
riff return another presently.

In *Hillary Term, sexto Hen. 8. Rot.*
358, It was alledged in Arrest of the
Verdict at the *Nisi prius*, that the Jurors
had eat and drank. And upon Exami-
nation it was found, that they had first
agreed; and that returning to give their
Verdict, they saw *Read*, Chief Justice,
in the Way, going to see a Fray, and
they follow'd him, & *in veniendo vide-
runt Ciphum, & inde biberunt*. And for
this, every one was fin'd Forty Pence,
and the Plaintiff had Judgment upon
the Verdict.

And *Dyer* 218. At the *Nisi prius*, the *Dyer* 372
Jury, after their Charge given, return'd,
and said they all agreed except one,
who had eat a Pear, and drunk a
Draught of Ale, for which he would
not agree; and at the Request of the
Plaintiff the Jury was sent back again,
and found the Issue for the Plaintiff.
And the Matter aforesaid being exa-
mined by the Oath of the Jurors *separa-*
tim,

Leon. 1.
P. 133.

fin, and the Bailiff who kept them, and found true, the Offender was committed, and afterwards found Surety for his Fine. In Trespafs by *Mounson* against *West*, the Jury was charged, and Evidence given, and the Jurors being retir'd into a House, to consider of their Evidence, they remained there a long Time without concluding any thing, and the Officers of the Court who attended them, seeing their Delay, searched the Jurors, and found that some of them had Figs, and others Pippins, for which the next Day the Matter was mov'd to the Court, and the Jurors were examin'd upon Oath, and two of them did confess they had eaten Figs, before they had agreed on their Verdict, and three of them did confess they had Pippins, but did not eat of them, and that they did it without the Knowledge or Will of any of the Parties. And afterwards, the Court set a Fine of 5 l. upon each of them that had eaten, and upon the others which had not eaten, 40 s. But upon great Advice and Consideration had, and Conference with the rest of the Judges, the Verdict was held to be good, notwithstanding the said Misdemeanour.

In *Ejectione firme*, it was found for the Defendant, three of the Jurors had Sweet-meats in their Pockets, and those

three

three were for the Plaintiff, until they were searched, and the Sweet-meats found, and then did agree with the other Nine, and gave Verdict for the Defendant. It was the Opinion of the Justices, that whether they eat or not, they were fineable for having of the Sweet-meats with them, for that is a very great Misdemeanour.

40 *Affize, Placito 11.* The Justices *Godbals.* said, that if the Jury will not agree in ^{353.} their Verdict, the Justices may carry them in a Cart, along with them, till they are agreed.

The Plaintiff (before the Trial) deliver'd a Breviat of his Evidence to the Jury, which contain'd no more than was prov'd in Court, yet by this the Verdict was avoided.

So *Mich. 13. Eliz. C. B. Metcalf* and *Dean.* After the Jury were gone from the Bar, they sent for one of the Witnesses and re-examined him; who gave the very same he had before given in Court, yet the Verdict was avoided; and the Reason of both is, a Fear and Jealousy that other Matters might be given, &c.

If a Juror depart after he is sworn, he shall be fined and imprisoned; and by Assent of Parties, another Juror may be sworn. *Br. Jurors 46. Lib. 5. 40.*

Jurors, in civil Matters, are to take Care not to be corrupted, for if they be, they may be severely punish'd, by a Writ, called a *Decies tantum*, which is a Writ lying against a Juror in any Inquest, when he taketh Money, or other Reward of either Party, to give his Verdict of his Side. And this, any Man that will, may sue in the King's Name and his own; and if it be found, he is to lose Ten Times as much as he took, to be divided between the King and the Informer. And so it lieth against an Embracerer, one that doth procure another to be so perjur'd: And if a Jury give a false Verdict, the Party grieved, may have a Writ of Attaint against them; of which, see more in the following Charge.

As to the Difference betwixt the Judge and the Jury, and that Question which has made such a Noise, viz. *Whether a Jury is Fineable for going against their Evidence in Court, or the Directions of the Judge.* I look upon it as absolutely determin'd since *Busbel's Case* in my Lord *Vaughan's Reports*. It doth appear there to have been resolved by all the Judges, upon a full Conference at *Serjeants Inn*, *That a Jury is not Fineable for going against their Evidence, where an Attaint lies.* And that it is evident by several Resolutions of all the Judges: *That where an Attaint*
lies,

lies, the Judge cannot fine the Jury, for going against their Evidence, or Direction of the Court, without other Misdemeanour.

And where an Attaint doth not lie, as in criminal Causes, upon Indictments, &c. my Lord *Vaughan* says these Words, *That the Court could not fine a Jury at the Common Law, where Attaint did not lie; I think to be the clearest Position that ever I consider'd, either for Authority or Reason of Law.* And one Reason for this (which can never be answer'd) is, That the Judge cannot fully know upon what Evidence the Jury give their Verdict; for they may have other Evidence than what is shown in Court. They are of the *Vicinage*, the Judge is a Stranger; they may have Evidence from their own personal Knowledge, that the Witnesses speak false, which the Judge knows not of; they may know the Witnesses to be stigmatised and infamous, which may be unknown to the Parties, or Court. And if the Jury know no more than what they heard in Court, and so the Judge know as much as they; yet they might make different Conclusions, as oftentimes two Judges do, and therefore as it would be a strange and absurd Thing to punish one Judge for differing with another in Opinion or Judgment; so it would be worse for the Jury, who are Judges of the Fact. But he that would

be better satisfied in this Point, may read that Case, and the Authorities and Reasons given by my Lord *Vaughan*, whom all Men honour as a Man of great Reason. It is shew'd in that Case, that much of the Office of Jurors, in order to their Verdict is *Ministerial*, as not withdrawing from their Fellows after they are sworn, not receiving from either Side Evidence after their Oath, not given in Court, not eating or drinking before their Verdict; or refusing to give a Verdict, and the like, wherein if they transgress they are fineable. But the Verdict it self, when given, is not an Act *Ministerial* but *Judicial*, and according to the best of their Judgment, for which they are not fineable, nor to be punish'd but by Attaint. Nor can any Man shew that a Jury was ever punish'd upon an Information, either in Law or the *Star-Chamber*, where the Charge was only, *for finding against their Evidence, or giving an untrue Verdict*, unless *Imbracery, Subornation*, or the like, were join'd.

But the *Fining and Imprisoning of Jurors for giving their Verdicts*, hath several Times been declar'd in Parliament, an illegal and arbitrary Innovation, and of dangerous Consequence to the Government; the Lives and Liberties of the People. This celebrated Tryal by Ju-
ries,

ries, having been confirm'd by many Parliaments.

Littleton, Sect. 368. tells us, That as the Jury may find the Matter at large; that is, a *Special Verdict* (which the Court cannot refuse, if it be pertinent to the Matter put in Issue) and leave the Law to the Court; so if the Jury will, they may take upon them the Knowledge of the Law upon the Matter, and may give their Verdict generally, as is put in their Charge. As for Example, upon all *General Issues*, as *Not Guilty* pleaded in Trespass; *Nil debet*, in Debt; *Nul tort nul Disseisin*, in Assize. *Ne disturba pas in quare impedit*, tho' it be Matter of Law, whether the Defendant be a Trespasser, a Debtor, Disseisor, or Disturber, in the particular Cases in Issue, yet the Jury find not (as in a *Special Verdict*) the Fact of every Case by itself, leaving the Law to the Court, but find for the Plaintiff or Defendant upon the Issue to be tried, wherein they resolve both the Law, and the Fact complicately, and not the Fact by itself. And so upon *Not Guilty* to an Indictment of Felony, Breach of the Peace, Trespass, &c. and other Cases, where the Law and Fact are complicate and join'd, they may determine upon both: Yet I must give them my Lord Coke's Caution, which is, That altho' the Jury, if they

*Hardres
Rep. 409.*

will, may take upon the Knowledge of the Law, and give a General Verdict, yet it is dangerous for them so to do; for if they mistake the Law, they run into the Danger of an Attaint. Therefore, to find the Matter specially, is the safest Way, where the Case is doubtful, To conclude, the Maxim I cited before, *Ad questionem Facti non respondent Judices, Ad questionem Legis non respondent Juratores*, literally taken is true; for if it be demanded, what is the Fact? The Judge cannot answer it: If it be ask'd, what is the Law in the Case? The Jury cannot answer it. But upon the General Issue, if the Jury be ask'd the Question, Guilty, or Not? which includes the Law, they resolve both Law and Fact, in answering *Guilty*, or *Not Guilty*. So as tho' they answer not singly to the Question, What is the Law; Yet they determine the Law in all Matters, where Issue is join'd and try'd, but where the Verdict is Special. But in such Cases, the Judge cannot of himself answer or determine one Particle of the Fact, but must leave it to the Jury, with whom let it rest and continue for ever, as the best kind of Trial in the World for finding out the Truth; and the greatest Safety of the just Prerogative of the Crown, and the just Liberties of the Subject; and he that desireth more
for

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T. per Pais.

for either of them, is an Enemy to both.

Gentlemen, I have already exceeded the Bounds of a Preface, and my own Design ; but as the Extensiveness of the Subject, has been the Occasion of it, so it must be my Excuse. I must ingenuously confess, that besides Common and Statute Laws, I have borrow'd from many of the *Learned*, who are dead, that I might pay the *Ignorant*, who are living, in Sterling Law and Reason : Which the candid Gentlemen of the Long Robe, I hope, will easily pardon, since herein I follow their Example, who seldom print, or plead, without making Use of the Reports and Precedents of their Predecessors. And as for the little motly *Momus's*, who will seek for a Knot in a Bulrush, the best Way of Answering them, is, by the *eloquent Silence* of Contempt,

THE

T H E

C H A R G E.

YO U are chosen, Gentlemen, out of the Body of this County, to represent every particular Member thereof, and for their Service you are summon'd to appear here this Day. The solemn Oath you have now taken, and the excellent Proclamation you have heard read, will, in great measure, instruct you in the Nature of your Duty, and ought also to be your chiefest Motive to the due Performance of it. But because you are sworn to present not only such Offences as come to your Knowledge, but such also as shall be given you in Charge, it becomes my Duty, as this Time, to give you an Account, what Crimes and Offences ought to be the Subject of your Inquisition, and are within the Jurisdiction of this Court to punish. But before I proceed to the particular Articles of my Charge, give me Leave to excite your Diligence and Attention, by laying before you the great Importance of the Duty now incumbent

cumbent on you. And this, Gentlemen, will soon appear to you, if you please to consider, that the Subject whereon it is grounded, is no less than the Continuation of our happy Government both in Church and State; the due Execution of our excellent Laws, and the Preservation of our Gracious Sovereign, on whom no small Part of our Happiness depends. These, Gentlemen, are Topics, on which it is harder not to say too much, than find Matter to enlarge upon: But let it suffice, at present, to remind you, that we have the Happiness to live under a Government so equal, and so well poiz'd, that it has all the Advantages of Liberty, beyond a Commonwealth, and all the Marks of Royal Sovereignty, without the Danger of a Tyranny: The Nature of our Government, above all others, is most exactly suited to the Situation of our Country, and the Temper of the Natives; an Island, being more proper for Commerce and Defence, than for extending its Dominions on the Continent; for what the Valour of its Inhabitants might gain, it could not so easily preserve: Therefore, neither the Arbitrary Power of one in a Monarchy, or of many in a Commonwealth, could make us greater than we are.

And

And as we are thus happy in the Constitution of our State, so are we yet more blessed in that of our Church. A Church, Gentlemen, which in its spiritual State, as we are Christians, is most conformable to the Rules of Christ, to the Apostolical Practice, and to the Primitive Institution ; in its rational State, as we are Men, its Doctrines are very agreeable to the Reason of Mankind ; its Precepts most becoming the purest and strictest Laws of Nature, Virtue and Morality ; in its political State, as we are *Englishmen*, its Interest is inseparable from the Interest of our Nation and Government ; so that I may, without Arrogance, affirm, that the only Reason why our Church is not more generally embraced and admired, is, because the Purity of its Doctrine, the Sobriety of its Devotions, the Moderation of its Discipline, and the Largeness of its Charity, are not more impartially and calmly consider'd, or more generally understood.

As for the Excellency of our Laws, Gentlemen, the daily Advantages we receive from them, gives them a Character beyond all the Rhetorick imaginable.

And to crown all our Joys, we are govern'd by a King (Gentlemen) in whom Religion and Policy, Justice and Clemency,

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Clemency, Majesty and Humility, are so harmoniously temper'd with all other Virtues and Graces, that 'tis morally impossible to distinguish which is predominant.

And yet, I fear, that there are not wanting Malecontents amongst us, who surfeiting themselves on too much Happiness, would perswade the People they might yet be happier by a Change. 'Twas indeed the Policy of their old Fore-father, when himself was fallen from the Station of Glory, to seduce Mankind into the same Rebellion with him, by telling him he might yet be freer than he was, that is, more free than his Nature would allow, or God was pleas'd to make him. We have already all the Liberty that Free-born Subjects can desire to enjoy; and all that is beyond That, is but Licentiousness; for the Suppression whereof, this excellent Proclamation you have heard read, was publish'd by the express Command of our Gracious Sovereign. Now, Gentlemen, I desire you to consider it, not only as the Command of our Great Sovereign upon Earth, but (as indeed it is) the very Dictates of that Supreme Being, by *whom Kings Reign*, and Princes decree Justice. Ingratitude amongst Men, was always esteemed one of the foulest Crimes, how much more towards that

that Supreme Giver of all good Things we enjoy, even our very Being; and what is more requir'd of us but to amend our Lives, according to His holy Word. This being so much our substantial Interest, one would think should need no other Motive to our strict Performance of it, did we but all strive to outvy each other in Virtue and Goodness, and observe that golden Rule, of *Doing as we would be done by*, we should not differ about such trivial Matters, as now we shamefully do. You may observe, Gentlemen, that the Design of this, is for the *Punishment of Wickedness and Vice, and for the Maintenance of God's true Religion and Virtue*: For when Men have obliterated the Law of God, written in their Hearts, despis'd fraternal Correetion, and rejected the Gospel preached to them by the Ministers thereof: The Government has wisely provided corporal and pecuniary Punishments, and Ministers of Justice for the Execution of them; for the Punishment of the Pocket, or a sound Whipping to some, is more effectual Rhetorick, than the Preaching of Divine Vengeance from the Pulpit; for such lewd Wretches have a sordid Notion, that Preaching is only a Trade, and to the Ministers of the Gospel, Godliness is great Gain: For the Correction there-

fore,

fore, of such, his Majesty has directed the secular Laws to be put in Execution.

Having now, Gentlemen, the particular Articles and Division of your Charge, and the Proclamation laid before you, I hope you will consider of the solemn Oath you have taken; and if you know of any Offences against either, present them unto us: I desire also you will look back upon the Presentments of your Predecessors, and take Care to see, that through Negligence, or worse, they have not been stifled in the Prosecution; for,

*Quid non Mortalia pectora cogis
Auri sacra fames.*

The

The DIVISION of the
CHARGE
INTO
OFFENCES
Against the LAW.

OFFENCES against the Law, whereof the Reverend Judges, or inferior Justices of the Peace, have Power to enquire, by their Commissions, are of two Kinds.

First, Capital Offences, for which the Offender shall lose his Life, or suffer *Ultimum Supplicium*.

Secondly, Fineable Offences, or Contempts, for which the Offender shall not Die, but shall be punished in his Body, Goods, or Lands, according to the Quality of the Offence.

Again, Capital Offences are of two Sorts, namely, *Treason* or *Felony*.

And *Treason* is likewise two-fold, *High-Treason* and *Petit-Treason*.

High

High Treasons are also of two Sorts,
Treasons at Common Law, and Treasons
by Act of Parliament.

All such Acts as are High Treason by the ancient Common Law of *England*, were declared, and particularly express'd in Parliament in the 25th Year of King *Edward* the 3d. And this Declaration was then made, at the special Petition of the Lords and Commons, that they might know what was High Treason, and in what Cases they should incur the Danger and Suspicion thereof; for that in the Time of the *Barons Wars*, when every Man was subject to Danger and Suspicion, and during the Minority of King *Edward the Third*, many Men were accused and condemned of High Treason, when as it was conceived, their Offences were not of so high and heinous a Nature as High Treason, by the ancient Law of the Land.

Therefore, in the Statute of the 25th of *Edw. 3.* such Acts as the Law did then adjudge High Treason, are declar'd and express'd, and do consist in these five Points ensuing.

First, to compass or imagine the Death of the King, the Queen, or the Prince their eldest Son and Heir, is Treason. 1.

And intending Death, or bodily Harm, Maiming, Wounding, or a Restraint of the King's Person, &c. The Offenders
D shall

shall be adjudged Traitors, by a later Stat. Also, if any one shall send to a foreign Prince to invade the Kingdom, shall assemble the People together to take the King into Custody, provide Arms to kill the King, or shall be guilty of any open Act, shewing a Design to Depose or Imprison the King, upon Proof made of Words signifying to what Intent such Acts were done; these, and such like, are a sufficient Declaration of compassing the Death of the King, and are Overt Acts to make a Man guilty of High Treason.

2. *Secondly*, To violate the King's Wife, or the King's eldest Daughter unmarried, or the Wife of the Prince the King's eldest Son and Heir, is Treason.

And violating the Queen's Person, was always High Treason by the Law, by Reason it destroy'd the Certainty of the King's Issue, and consequently rais'd Contention about the Succession. If the Wife of the King consents to the Adultery, it is Treason in her: But this extendeth not to a Queen Dowager, 3. Rep. 9.

3. *Thirdly*, To levy War against the King, or to adhere to the King's Enemies, within the Realm or without, is Treason.

But as in Cases of Treason there must be an Overt Act; a Conspiracy or Compassing to levy War, is no Overt Act, unless

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less a War be actually levied : But if a War is actually levied, then the Conspirators are all Traitors, tho' they are not in Arms. And if two or more conspire to levy War, and one of them only raises Forces, this shall be Treason in all Persons raising Forces for any publick End or Purpose, and putting themselves in a Posture of War, by chusing Leaders, &c. and opposing Constables, or Guards, though they assemble to pull down Bawdy Houses, &c. are guilty of Treason. *Sid. 358.*

Fourthly, To counterfeit the King's Great Seal, Privy Seal, or Money current within the Realm, is Treason. 4

Counterfeiting the King's Seal has been Treason from the earliest Date. But this does not extend to the affixing of the Great Seal by the Chancellor to a Patent, without Warrant, &c. for there must be an actual Counterfeiting the King's Seal; and therefore compassing to Counterfeit it, is no Treason.

Fifthly, To kill the King's Chancellor, or Treasurer, or Justices of either Bench, &c. sitting in their Places, and executing their Offices, is Treason. 5

All these Acts are High Treason against the King's Person, and his Majesty Royal, by the Judgment of the ancient Common Law of England.

- Besides these Treasons at Common Law, divers other Acts, tending to the Diminution of the Crown, and Ruin of the Commonwealth, and which were unknown, and unheard of in the Times of *Edw. 3.* have been made and adjudged Treason by sundry subsequent Acts of Parliament. And these Treasons which were unknown unto our Ancestors, for the Space of four hundred Years after the *Norman* Conquest, have been invented, and practised since the great Change made in the State Ecclesiastical by King *Hen. 8.* For the Pope's usurped Authority, being abolish'd, and the King's Supremacy in Causes Ecclesiastical, established by Act of Parliament in the twenty eighth Year of King *Hen. 8.* Which was a Year of Jubile to the Subjects of *England*, for that they were manumitted and set free, from the base Slavery of the Court of *Rome*, whereunto they had been Subjects for divers Ages before: Yet some there were that would not be free, but desired to continue Slaves to the Pope still, and therefore deserved to have their Ears bor'd and nailed to the Gates of *Rome*, as a Mark of perpetual Servitude. But because it yet lay in the Power of Subjects to renounce their Allegiance; the Wisdom of the Parliament did then set down an Oath, to be administred to all the

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the Subjects of *England*, whereby they should acknowledge the King's Supremacy in all Causes, and over all Persons within his Dominions, and made it High Treason to refuse that Oath; and so the Refusal of this Oath of Supremacy, was the first Treason by Act of Parliament, added to the Treason at Common Law before expressed. This Act continu'd in Force till the first Year of Queen *Mary*, 1. Q. Mary. who receiving the Yoke of *Rome* again, did, by the Act of Repeal, abolish the Oath of Supremacy, and declared such Acts only to be High Treason, as were holden to be so in the twenty fifth Year of *Edward* the Third.

But when Queen *Elizabeth* came to the Crown, tho' she removed the Foreign Power, and again restored the ancient Jurisdiction of the Crown, and revived the Oath of Supremacy, yet she did not make it High Treason at the first to refuse that Oath. For by the Statute of *primo Eliz.* the first Refusal of the Oath 1. Eliz. of Supremacy was but a Contempt, and the Punishment only Forfeiture of his Spiritual or Temporal Promotion, or Office during Life; the second Refusal was made Premunire; and the third, High Treason: With this Moderation did Queen *Elizabeth* begin her Reign.

Afterwards, by a Statute made the 5th *Eliz.* the first Refusal of that Oath 5. Eliz.

was a Premunire, and the second High Treason. And thus it rested till the 13th Year of her Reign, without the Additions of any other Treasons to those at the Common Law. But then, indeed, the Disloyalty of some of her own Subjects, and the Malice of the Bishop of *Rome*, by setting abroad new Treasons never heard of before, did enforce her to make new Laws to meet with those traitorous Conspirators against her Person and Crown: For the Pope, by the Solicitation of some of her own disloyal Subjects, had sent over a Bull of Excommunication against the Queen herself: To depose and deprive her of her Crown and Dignity, withal he sent over other Bulls by the Hands of *English* Priests and Jesuits, authorizing them to absolve and discharge all the Queen's Subjects from their Allegiance and Obedience unto her, and to reconcile them to the See of *Rome*.

13 Eliz.

Whereupon followed a dangerous Rebellion raised by two great Earls in the Northern Parts, and divers other perilous Practices were discovered in other Parts of this Kingdom, which did forceably move the Parliament in the 13th, to make it High Treason, to bring in and publish any such Bulls of absolving or reconciling the Queen's Subjects, as also

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to be absolved or reconciled, by Vertue of those Bulls.

Here was another Cause of High Treason, added to the Treasons of the Common Law. But this Law of the 13th of *Eliz.* did only restrain the bringing in of Bulls, and not the coming in of Priests and Jesuits; and therefore, about the 20th of *Q. Eliz. Campion*, with other Jesuits and Seminary Priests, came boldly into *England* to strengthen the Catholick Party, as themselves professed, and here they practised by Preaching, private Persuasions, and spreading of Books and Pamphlets, to withdraw the Subjects from their Obedience, and to reconcile them to the See of *Rome*.

Therefore, in the 23d of Queen *Elizabeth*, another Act was made, whereby it was made High Treason, to endeavour by any other Means, besides Bulls and other Instruments sent from *Rome*, so to withdraw and reconcile the Subjects, and it was likewise made Treason in every Subject that should be so withdrawn or reconciled.

After this again, because this Work of stealing the Hearts of the Subjects from their Sovereign was *Opus Tenebrarum*, and wrought by secret Means impossible to be prov'd, for that it was done by Jesuits and Seminary Priests, who distill'd their Poison in the Ears of

the People in Corners, as the envious Man sow'd his Tares in the Night.

Therefore, in the 28th Year of *Queen Elizabeth*, all Jesuits, Seminary Priests, and other Priests ordained by Foreign Authority, were banish'd out of the Realm by the same Act of Parliament; and by the same Act it was made High Treason for any such Priest or Jesuit, being born in *England*, after forty Days next ensuing that Sessions of Parliament, to come into, or remain in *England*. The Makers of that Law knew their Errands to be Treason, and therefore they set a Mark or Character of Treason upon their very Persons, though no other Act of Treason be proved against them.

These are some of those excellent Penal Laws, which are the Bulwark of the Protestant Religion against Popery; these are the Laws which the late bigotted King, by closetting Men in Office, cajoling unwary Dissenters, and all other indirect Means imaginable, strove to abolish; in hopes, no doubt, in process of Time, to revive that comfortable Act, *De Hæretico comburendo* against us.

3 Eliz.

Although the *counterfeiting* the King's Coin was Treason at Common Law, as before I mention'd, yet the Judgment was only as in Case of Petit Treason; but by a Statute in the 5th of *Queen Elizabeth*, Clipping, Washing, Filing of Money

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Money for Lucre or Gain, any of the proper Money of the Realm, or of other Realms, allow'd to be Current by Proclamation, is made High Treason; and in the 18th of the same Queen, Impair-^{ing}, Diminishing, Falsifying, Scaling or Lightening the proper Money of this Realm, or of any other made Current by Proclamation, is made High Treason, and the Judgment is, to be hang'd, drawn and quarter'd, but without Corruption of Blood, or Loss of Dower.

By the Stat. 8 and 9. W. 3. cap. 26. For preventing the Counterfeiting the Coin, it is enacted, That no *Smith, Engraver, Founder*, or other Person whatsoever (except such as are imploy'd in his Majesty's *Mints*, for the Use of the said *Mints* only, or Persons lawfully authorised by the Lords of the Treasury) shall knowingly make or mend any *Punchion, Counterpunchion, Matrix, Stamp, Dye, Pattern, or Mold*, of Steel, Iron, Silver, or other Mettal, or of Spaud or fine Founders Earth, or Sand, or other Materials whatsoever, by which shall be made or impressed, the Figure, Stamp, or Similitude of both or either Side, of any Gold, or Silver Coin, Current within this Kingdom; or make or mend any *Edger, Instrument or Engine*, contriv'd for the Marking of Money round the Edges, with Letters, Grainings or other Marks,

Marks, resembling those on the Edges of Money coin'd in the King's *Mint*, nor any Press for Coinage, or Cutting-Engine for cutting round Blanks ; nor knowingly buy, sell, or hide, or without lawful Authority or Excuse, have in his House or Possession, any such Tool or Instrument before mentioned. And any Person whatsoever (except as before) who shall offend in any the Matters aforesaid, shall be guilty of High-Treason.

Now, Gentlemen, to shew you that our Laws are neither cruel nor unjust in this Affair, it is sufficient to say, That they agree with the Laws of almost all Nations ; which seldom do conspire in bloody and inhuman Executions.

The *Romans* consider'd this Crime of Clipping and Coining, generally speaking, as *High Treason* : They made exact Enquiries after these Offenders : They tortured Men to confess their Accomplices : They allow'd Rewards and Privileges to such as would impeach ; if they were Slaves, they were set at Liberty, and the Exchequer paid their Ransom to their Masters : If one of these Offenders escap'd out of Custody, his Keeper, if privy to it, certainly died for him : If the Master or Owner of the House or Place where such Offence was committed, were conscious to the thing,

altho'

altho' not actually employ'd himself, he forfeited his House, Goods and Estate, and was himself transported ; and if he knew nothing of the Matter, yet he forfeited his House, unless he made himself the first Discovery to the Magistrate (to oblige them, I suppose, to greater Caution whom they trusted in their Houses.) All Servants, Helpers and Assistants, were also condemn'd to die, as well as the principal Agent : And the Death they often underwent, was, being burnt. And yet the *Romans* were as sparing of Blood, and as merciful in their Execution, as any Nation whatsoever. *L. 11. 9. Tb. Cod. Tit. 21. L. 1. Tb. Tit. 22.*

The Laws of the *Wisigoths* punish'd these kind of Offenders, if they were Slaves, with the Loss of their Right-Hand ; if they were Freemen, with the Loss of half their Estates, and being made Slaves to whom the King pleased. *Rerum Hispan. Tom. 3. pag. 957.*

The Laws of our own Country, in King *Athelstan's* Time, punish'd them (as above) with cutting off their Right-Hands, and fixing them over the Place where they committed the Offence. In King *Ethelred's* Days, they were to undergo the *Treble Ordeal*, (*i. e.* to carry a red-hot Iron of three Pound Weight in their Hands, such a determinate Space

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of Ground) and if they miscarry'd, then they were to die. *Leg. Atbelstani R. 7. Brempton, pag. 843. Leg. Ethelredi R. pag. 898.* In *Hen. 1.* Time, they were condemn'd to lose, some their Hands, and some their Eyes: And some (in Allusion to the Word) who were found to *adulterate* the King's Coin, were so punish'd, as if the Laws intend- ed to prevent *Adultery* itself; as appears in our Histories of those Times. These Punishments were after chang'd into the Modern Executions, and have so continued ever since, altho' 'tis probable, that Punishments of *greater Pain* and *constant Shame*, such as they heretofore were, would secure us better, than put- ting Men to a short and easy Death.

'Tis likewise Treason during War with *France*, to send or load, or trans- port, or deliver, or cause to be, for the Use of the *French King* or his Subjects within his Dominions, any Arms, Ord- nance, Powder, Bullets, Pitch, Tar, Hemp, Masts, Cordage, Iron, Coals, Lead, or Salt-Peter: 'Tis also High- Treason to go or repair, or imbark in any Vessel, with an Intent to go into *France*; and 'tis close Imprisonment without Bail, during their Majesties Pleasure, to come or return from *France*, or any of the *French King's* Dominions in *Europe* into *England*, or any of their Majesties

Majesties Dominions in *Europe*. Stat. 3
and 4 *W.* and *M.*

It is made Treason for any Officer or ^{2 & 3}
Soldier of the Realm, to hold Correspondence ^{Ann.}
with any Rebel, or Enemy to the ^{12 A.}
King; or to give them any Advice, or
Information, by Letter, Message, &c.
And if any Subject within *Great-Britain*
or *Ireland*, or without the same, shall
inlist himself, or promote any Person
to list, with Intent to go beyond Sea,
to serve any Foreign Prince, State, &c.
as a Soldier, without the King's Leave,
he shall suffer and forfeit as in Cases of
Treason.

Hindering, or endeavouring to set a-
side any Person, who shall be next in
Succession to the Crown, for the Time
being, from coming to the Crown, is
made High-Treason, by Statute.

And if any Person shall maliciously, ^{4 & 5}
advisedly, or directly, by Writing or ^{Ann.}
Printing, declare or affirm, that the
King is not lawful King, or that the
Pretended Prince of *Wales* hath any Ti-
tle to the Crown, or that any other Per-
son hath a Right to it, otherwise than
according to the Act of Settlement; or
that the Kings and Queens of *England*
are not able, by the Authority of their
Parliaments, to make Laws sufficient to
limit and bind the Crown, he will be
guilty of High-Treason: And Preach-
ing,

ing, Teaching, or advisedly Speaking, incurs the Penalty of a *Premunire*.

And the Penalty of a *Premunire*, is to be out of the King's Protection, to forfeit all Lands and Goods, and be imprisoned and ransomed at the King's Pleasure.

But where a Person is indicted for Treason, whereby Corruption of Blood may be made, or for Misprision of such Treason, he shall be permitted to have a Copy of the whole Indictment five Days before his Trial, to advise with Counsel, &c. And shall be allowed to make a full Defence, by Counsel learned in the Law, and his Witnesses shall be examined fully on Oath; and he shall not be tried or attainted but by the Oaths of Two lawful Witnesses to the same Overt-Act, to be produc'd Face to Face.

This is by *Stat. 7. W. 3.* For before that Act, when Men were committed for Treason, their Friends were not admitted to come near them; nor were they allow'd Pen, Ink, or Paper, or inform'd for what Treason they were committed, or by whom accus'd: And tho' they had Liberty to except against any of the Jury, they were never allowed to have a Copy of the Panel, to make any Advantage of it. So that our
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Law is alter'd very much for the better,
in this Particular.

Misprison of Treason, is, where a *Misprison*
Man knoweth of any Treason, and con-
ceals the same; but it must be a bare
Knowledge only; and in Treason there
are no Accessaries.

When any one doth know, that ano- ^{3 Inst. 138}
ther hath committed any Sort of Treas-
on, and doth not discover the same to
the King, his Privy-Council, or to some
Magistrate, that the Offender may be
secured and brought to Justice; this
bare Knowledge and Concealment was
High-Treason at Common Law. But a
Man must now assent to some outward
Act, that shews an Approbation of it,
to make it Treason; as, where one ha-
ving Notice of a Meeting of Conspirators
against the Government, goes into their
Company, and hears their treasonable
Consultation, and conceals it, &c.

But one that is only told in general,
there will be a Rebellion, without
knowing the Persons concerned in it,
or the Place where, &c. may conceal it,
and not be guilty of Treason.

Petit

Petit-Treason.

Petit-Treason is an inferior Degree of Treason, and it is committed against a Subject, between whom and the Offender, the Law presumes there is a special Obedience and Subjection.

25 Edw. 3. Therefore, if the Wife murder the Husband; the Servant his Master; or any inferior Clerk his Bishop or Diocesan; this is Petit-Treason by the Common Law, and the Judgment herein, is, for a Man to be hang'd and drawn, and a Woman to be burnt.

If a Servant kills his Mistress, that is a single Woman, or his Master's Wife; or if a Servant, upon Malice taken during his Service, kills his Master after Departure from his Service; these are Petit Treason.

Dyer 128. Where a Wife or Servant procures a Stranger to kill the Husband or Master, in the Absence of such Wife or Servant, neither the Procurer or Actor are guilty of Petit-Treason, but of Murder only: But if the Wife or Servant, be either actually present when the Crime is committed, or present only in Judgment of Law, as being in the same House, tho' not in the same Room, such Wife or Servant are guilty of Petit-Treason, and the Stranger of Murder.

A Maid Servant, and a Stranger, conspired to rob the Mistress, and in the Night the Servant opened the Door, and let the Stranger into the House, who killed her Mistress, she lighting him to her Bed, but saying nor doing any thing, only holding the Candle; this has been adjudg'd Murder in the Stranger, and Petit-Treason in the Servant.

Aiders, Abettors and Procurors, are within the Statute against Petit-Treason.

Murder.

MURDER is a wilful and felonious Killing of another, upon premeditated Malice: And if the Death of the Party happen within a Year and a Day after the Wound given, it is Murder.

But tho' every Killing of a Man is *Style 467.* Homicide, yet every Homicide is not Murder: For if two Men quarrel, and presently go out and fight, and one kills the other, this by our Law is called Manslaughter; and the Party hath his Benefit of Clergy. But if they sleep upon it, and fight the next Day, after the Passion hath had Time to cool, it is Murder.

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3 Inst. 58.

An unlawful Act, with an ill Intent, is Murder; and without an ill Intent, Manslaughter. If one throw a Stone over a Wall, in a Place where People often resort, or at another in Play, and kill a Person; it is Murder, if done with an evil Intention to hurt. And if a Man shoot off a Gun in a City, or Highway, &c. which must of Consequence put the Life of a Man in Peril, and one is kill'd, it is Manslaughter. If a Man shooting at the tame Fowl of another, which is an unlawful Act, kill a Stand-by, it will be Murder: If he be shooting at wild Fowl, &c. and he is not qualified to keep a Gun, it is Manslaughter; and if he be qualified to keep a Gun, which makes the intended Act lawful, 'tis only Chance-medley.

These are very nice and just Distinctions which the Law makes in these Cases: And in Chance-medley, and *Se Defendendo*, the Offender is pardoned; tho' such a Regard is had to the Life of another Person, that a Forfeiture of Goods is incurred.

Cro. Car.

544.

But there is a justifiable Homicide, which is liable to no Forfeiture; as, if a Man comes to burn my House, or to rob me, &c. I or my Servant may kill him, without being guilty of Felony. So, if a Woman kills one that attempts

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to ravish her, it is no Felony in her ;
nor shall any thing be forfeited.

So strictly is the Guilt of Murder <sup>H. P. C. 31
Kel. 87.</sup> construed, that no Words or Gestures, tho' never so reproachful, are a sufficient Provocation to extenuate the Crime ; nor is it, in the Common Law, of any Signification who begins the Quarrel, or gives the first Stroke. If two or more assemble to do an unlawful Act, as to beat a Man, commit a Riot, rob a Park, &c. and one of them kills a Person, this is Murder in all.

And by our Law, all that are present, aiding and abetting him that doth a Murder, are principal Offenders, tho' they give no Stroke.

Felonies.

THE Capital Offences, called Felonies, are of Two Sorts, publick and private.

First, Publick Felonies are such as are hurtful to the Common-Weal, or a Multitude of Subjects.

Secondly, Private Felonies are such as are hurtful to this or that private Person. Publick Felonies are of Three Kinds, and do tend either to the Disturbance of the publick Peace, or to the

Hindrance of the publick Profit, or to the Destruction of a great Number of Subjects in their Persons.

Stat. 27.
Eliz. cap.
12.

For the first Kind of *publick* Offences. To relieve or receive a Jesuit or Seminary Priest, which comes to trouble the Peace of the Realm, (if the Reliever or Receiver know him to be a Jesuit or Seminary Priest) 'tis Felony, by the Statute of 27th *Eliz. cap. 12.*

Secondly, A convicted Popish Recusant of small Ability (not having 20 Marks of Freehold *per Ann.* or 40 Pounds in Goods, nor being a *Feme Covert*) that shall not repair to his Place of usual Dwelling or Place of Birth, or where his Father or Mother is dwelling, and there notify himself to the Minister and Constable, according to the Statute of 35 *Eliz. 1. Eliz. 1.* If after he be apprehended, and shall not conform himself within three Months, as the Statute appoints, any two Justices of the Peace, or the Coroner may require such Offender to abjure the Realm. And if such Popish Recusant, depart not the Realm within the Time limited, or return without the King's Licence, he shall be adjudg'd a Felon, without Clergy.

Thirdly, If any Man go beyond Sea, to serve any Foreign Prince, without taking the Oath of Allegiance before his Departure; or if any Man that hath
serv'd

serv'd any Foreign Prince, before he be bound with Sureties, not to be reconcil'd to the See of *Rome*, nor to consent to any Conspiracy against the King; this is Felony, by the Stat. 3 *Jac. cap. 4.* ^{3 *Jac. cap. 4.*}

Fourthly, If a Multitude of Subjects be assembled together in a rebellious Manner, and do refuse to disperse themselves, after Proclamation made by a Justice of Peace, commanding them to depart in a peaceable Manner; they are all Felons by the Statute of 1 *Mar.* ^{1 *Mar.*}

Fifthly, Counterfeit Rogues, if they shall call themselves *Egyptians*, and be found Wandring in any Part of the Realm, are Felons by the Statute, 1 & 2. *Pb. & Ma. cap. 4.* ^{1 & 2 *Pb. & Ma. c. 4.*}

Sixthly, Incorrigible Rogues, branded with an Iron, being found Begging or Wandring; and such as wander under the Names of Mariners or Soldiers, with counterfeited Passes, are Felons by the Statute of the 36 *Eliz. cap. 4.* and 1 *Jac.* ^{36 *Eliz. c. 4.*} *cap. 7.* But these Statutes are repeal'd. ^{1 *Jac. c. 7.*}

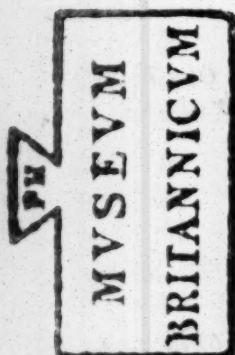
Seventhly, If a Soldier who is retain'd, or hath taken Prest Money, shall depart out of the King's Service without Licence; 'tis Felony by the Statutes of 7 *Hen. 7.* ^{7 *Hen. 7.*} *cap. 1.* & 3 *Hen. 8.* ^{3 *Hen. 8.*} 5. And these I call *publick* Felonies, tending to the Disturbance of the publick Peace. ^{cap. 5. 4}

For the second Kind of *publick* Felonies, Imbezelling his Majesty's Ordnance,

nance, Shot, Powder, or other Habili-
ments of War, or Victuals provided for
Soldiers, if it be by any Person having
the Charge or Custody thereof, and to
the Value of Twenty Shillings, tho' at
several Times, 'tis Felony.

Imbezelling of any Record or Parcel
thereof, *Writ, Return, Pannel, Process,*
or Warrant of Attorney in the *Chancery,*
Exchequer, King's Bench, Common Pleas,
or *Treasury*, by Reason whereof Judg-
ment shall be revers'd, it is Felony in
the Parties, and in their Counsellors,
Aiders and Abettors.

8. Hen.
6. 12.



Transporting any live Sheep out of
the King's Dominions, is likewise Felony,
by the 8th of *Eliz. c. 3.*

Purveyors likewise, if they take the
Subjects Goods without Warranty, or
without just Apprizement, and giving
ready Money, or Tallies, for the Goods
taken, do become Felons by the Statute
of the 5th of *Ed. 3.* and divers other
Statutes.

Acknowledging any Fine, Deed in-
roll'd, Statute, &c. in the Name of
another, is Felony without Benefit of
Clergy: As is also Personating Bail, by
21. Jac. 1. c. 26.

Persons maliciously burning any Ricks
of Corn, Hay, Barns, or other Buildings,
&c. are guilty of Felony: And if a
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ness, set on Fire any Dwelling-house or Out-house, he shall forfeit 100 l. to be distributed among the Sufferers; or shall be sent to the House of Correction, and there be kept to hard Labour for Eighteen Months. *Statutes 22 Car. 2. 6 Ann.*

To pull down any Dwelling-house, or Out-house, Church or Chappel, &c. is Felony without Benefit of Clergy, by 1 *Geo.* And to cast away a Ship wilfully, or cause the same to be done, is Felony, 1 *Ann.* Also by a late Statute, 1 *Geo. 6. c. 48. &c.* if any Persons shall maliciously set on Fire, or burn any Wood standing, belonging to another, Underwood or Coppice, they shall be guilty of Felony.

Bankrupts, removing, concealing, or imbezelling any Money, Effects, &c. to the Value of 20 l. are guilty of Felony. Servants purloining or imbezelling their Masters Goods, &c. to the Value of 40 s. is likewise Felony, by the Statutes 5 and 12 *Ann.*

The 8 and 9, *W. 3.* makes Forgery of Bank Bills, Felony without Clergy. The 7 *Ann.* enacts, That Forging and Counterfeiting *Exchequer* Bills, or any Indorsements thereupon, and tendring such Bills in Payment, knowing the Forgery, shall be Felony, excluded of Clergy. Forging Lottery Orders, or altering the Number, or principal Sum of any Order, is also Felony.

These, and many others, are publick Felonies against the Profit of the King's People.

Lastly, touching the Third Kind of *publick* Felonies.

If any Person infected with the Plague, and having the Sore upon him uncured, do wilfully walk abroad, and converse with Company, this is Felony by the *Statute of the 1 Jac. ca. 31.* And because it may tend to the Destruction of a Multitude of the King's Subjects, I number it amongst the *publick* Felonies.

Secondly, Private Felonies, which are hurtful to particular Persons, are of Three Kinds, and do consist either in taking away the Life of a Subject, or violating the Person of a Subject, without taking away his Life, or in taking away the Goods of a Subject. The Offence of taking away the Life of a Subject, is divers, according to the Diversity of the Circumstance: As in Case of Poisoning, Stabbing, &c. if upon a sudden Falling-out, 'tis Manslaughter; and these are Felonies punish'd by Death.

If one do enter, or attempt to break another Man's House, with an Intent to rob or kill the Owner of the House, if the Malefactor be slain in his Attempts, it is no Offence; for a Man's House is his Castle, for the Safety of his Person and

and Goods, wherein if he be assay'd, the Law doth allow him to make his Defence by all Means possible.

So, if a Man be assaulted in the King's Highway, which by the ancient Law of this Land had the Privilege of a Sanctuary, if the Assault be made with a Purpose to rob or kill, it is no Felony, but justifiable by the Statute of 21st Edw. 3. Edw. 3.

To make Killing excusable, requires these Things, 1. It must be an inevitable Necessity. In case of a justifiable *Homicide*, as of a Thief that comes to rob me, or by an Officer executing an Arrest, the Party need not give back to the Wall. But in Killing *se defendendo*, the Party that is assaulted is not excused, unless he give back to the Wall. But if the Assault be so fierce, and in such a Place, that giving back would endanger his Life, then he need not give back. 2. It must be in his Defence. If *A.* be assaulted by *B.* and before a mortal Wound given, *A.* gives back till he come to the Wall, and then in his Defence kills *B.* this is *se defendendo*. But if the mortal Wound be first given, then 'tis *Man-slaughter*. If *A.* upon Malice *præpense* strike *B.* and then fly to the Wall, and there in his own Defence kills *B.* this is Murther. But if there be Malice between *A.* and *B.* and

B. and *A.* strike first, *B.* retreats to the Wall, and in his own Defence kills *A.* this is *se defendendo*.

I have already observ'd, that *se defendendo* incurs Forfeiture of Goods : For Murther, Lands, and Tenements, as well as Goods, are forfeited ; and for Manslaughter, Goods and Chattels. But if Felons stand mute out of Stubbornness, and will not put themselves upon Trial by their Country, they save the Forfeiture of their Estates, because in such Case they may not legally be convicted, but they shall have Judgment of *Paine fort & dure*, which is the severest Judgment our Law passes upon any Offender ; and the Sentence is as follows :

4 Ed. 4. 11. ' That the Prisoner shall be sent to
 14 Ed. 4. 7. ' the Prison from whence he came, and
 6 H 4. 2. ' put into a dark Room, stopped up from
 ' Light, and there shall be laid upon
 ' the bare Ground, without any Litter,
 ' Straw, or other Covering, and without
 ' any Garment about him, saving some-
 ' thing to cover his Privy Members, and
 ' that he shall lie upon his Back, and
 ' his Head shall be covered, and his Feet
 ' bare, and that one of his Arms shall
 ' be drawn with a Cord to one Side of
 ' the House, and the other Arm to the
 ' other Side, and that his Legs shall be
 ' used in like Manner, and that upon
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his Body shall be laid so much Iron and Stone as he can bear, and more, and that the first Day after, he shall have three Morsels of Barley-Bread, without any Drink, and the second Day he shall drink so much as he can, three Times, of the Water which is next the Prison Door, saving running Water, without any Bread ; and this shall be his Diet until he die.

This Sentence is so very severe, that never *Englishman* as yet (tho' several have been prest to Death, to preserve their Estates) had the Heart to execute it according to the Letter : And it is sufficient to deter the most hardened Offenders from persisting in their Obstinacy, in refusing to be tried by the Laws of the Land.

The Felonies which consist in violating the Person of a Subject, without taking away Life, are not by the Common Law, but by sundry Acts of Parliament.

Buggery is Felony without Clergy, ^{25 Hen. 8. c. 6.} by 25 Hen. 8. c. 6. reviv'd by 5th ^{5 Eliz. c.} Eliz. c. 17. It may be committed by 17. Man with Man or Woman, or by Man or Woman with a Beast ; and it is a carnal Knowledge of the Body of Man or Woman,

Woman, or of Beasts, against the Order of Nature. 12 Rep. 36.

13 Edw. 1.
c. 34.
18 Eliz.
c. 6.

Rape, or Ravishment, is a violent deflowering of a Woman, or the Carnal Knowledge had 'of the Body of a Woman against her Will; and although she consent after, 'tis Felony without Benefit of Clergy.

39 Eliz.
c. 9.

To take any Maid, Widow, or Wife, (having Lands or Goods, or being an Heir Apparent) against their Will, and to receive any such Man, knowing thereof, and to abet the same, is Felony, and such shall be reputed Principals, and lose the Benefit of Clergy.

18 Eliz.
c. 7.

To know carnally any Woman-child, under the Age of Nine Years, is Felony without Clergy.

Marrying a second Husband or Wife, the former living, is Felony, except in the Cases following.

1. The Man under Fourteen, or the Wife under Twelve, at Time of first Marriage, and not agreeing after first Espousals, may marry a second Husband or Wife.

2. A Man or Wife absent above seven Years, second Marriage no Felony.

3. After a Divorce, though *Mensa & Thoro* only.

4. After a Nullity declared of the former Marriage by the Ecclesiastical Court.

But

But in Case of Absence, the seven Years must be continually the one not knowing the other to be living during that Time.

To cut out the Tongue, or put out ^{5 H. 4.} the Eyes of any Person, is Felony by ^{22 Car. 2.} Stat. 5 H. 4. Before this Statute, my Lord *Coke* tells us, it was usual, when Men were robbed, beaten, or wounded, for the Offenders to put out their Eyes, or cut out their Tongues, to prevent Accusation. And by 22 & 23 Car. 2. If any Person shall of Malice forethought, or by lying in wait, cut or disable the Tongue, put out an Eye, slit the Nose, cut off a Nose or Lip, or cut off or disable any Member of any Person, with Intention to maim or disfigure, 'tis Felony in him and his Abettors.

And Maihem, which is a corporal ^{H. P. C.} Hurt, whereby a Man loseth a Member, ^{133.} so that he is less able to fight and defend himself, was Felony by the Common Law, but not of Death; for by our ancient Laws, if a Person was found guilty of Maihem, the Judgment against the Offender was to lose the like Member that the Plaintiff lost by his Means: But afterwards it was punished with Fine and Imprisonment, &c.

The Offence of Maihem is said to be under all Felonies deserving Death, and above all other inferior Offences.

If

Witchcraft.
1 Jac. 1.

If any Person shall use Invocation, or Conjurati^on of any evil Spirit ; or shall consult, covenant with, entertain, or employ any evil Spirit, to any Intent ; or take up any dead Person, or Part thereof, to be used in Witchcraft ; or shall have used any of the said Arts whereby any Person shall be either killed, consumed, or lamed, in his or her Body, they shall suffer as Felons, without Benefit of Clergy.

Where Persons take upon them by Witchcraft to tell where Treasure is to be found, Things lost or stoln may be had again, or to do any Thing to provoke unlawful Love ; or whereby any Cattle or Goods, &c. of any Person shall be destroy'd or injur'd, though the same be not effected ; this is punished by a Year's Imprisonment, Pillory, &c. and the second Offence is Felony.

These last are called Witchcraft in the second Degree ; but we have seldom any Prosecutions upon this Statute.

Felonies

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Felonies which are hurtful to particular Persons, in their Goods or Possessions, are of divers Natures and Names, according to the Diversity of Circumstances.

THE breaking or entring into a *Burglary*. House by Night with Intent to commit some Felony, is call'd Burglary, whether the Felonious Intent be executed or not; some Opinions are, that after Sun Set, and before Sun Rising, it is Night; but my Lord Coke's Opinion *Coron. 239.* is, that so long as the Countenance of a Person may be discern'd, it is Day. The Night aggravates the Offence; for if it be committed in the Day time, it is called *House-breaking*, not Burglary.

The entring into a House by the Doors open, is a Breaking in Law; but not sufficient, without an actual breaking: Therefore if the Door be open, or Window be open, and the Thief draw out Goods thereby, 'tis no Burglary.

But if the Thief break the Window; draw the Latch; unlock the Door; break a Hole in the Wall; these are Breaking. And as there must be a Breaking, so there must be an Entry. Setting the Foot over the Threshold; putting the Hand, or a Hook, or a Pistol, within the Window or Door. Turning the Key

Key where the Door is lock'd on the Inside, is an Entry. In some Cases 'tis Burglary, without actual Breaking.

Divers come to commit Burglary, and one does it, the rest watch at the Lane's End ; 'tis Burglary in all ; for the Act of one of them is in Law the Act of all.

Crom. 30. A Thief goes down a Chimney to rob, is Burglary.

4. PC. 14. Thieves having an Intent to rob, raise Hue-and-Cry, and bring the Constable, to whom the Owner opens the Door ; and when they come in, they bind the Constable, and rob the Owner, Burglary.

A Thief assaults the House ; the Owner, for fear, throws out his Money ; it seems not Burglary, but only Robbery.

Dalt. 99. A Thief gets in by the Doors open in the Day, lies there 'till Night, then robs and goes away ; no Burglary : But if he break open the Door, Burglary.

The Servant opens the Window to let in a Thief, who comes in and steals, this is Burglary in the Stranger, but Robbery in the Servant.

If *A.* enters into a Hall by the Doors open, the Owner retires to a Chamber, and there *A.* breaks in ; this is a Breaking and Entering.

A. lies in one Part of the House, *B.* his Servant in another ; between them a

Stair-

Stair-foot Door, latch'd ; the Servant in the Night draws the Latch, and enters his Master's Chamber to murder him, Burglary.

The Church is a Mansion-house within the Law.

The Out-Buildings, as Barns, Stables, are Parcel of the Mansion-house, and Burglary may be committed in them.

And it may be committed, though all Persons be out upon Occasion. So if a Man has two Houses, and sometimes lives at one, and sometimes at another.

A Shop is Parcel of a Mansion-house.

A Chamber in an Inn of Court, where a Person usually lodgeth, is a Mansion-house.

A. Leases to B. a Shop, Parcel of his House, to work in, where B. works in the Day, which is broken ; ruled not Burglary, because sever'd by Lease. *Trin. 17 Jac.*

By the Statute of 18th of *Eli. c. 6.* Clergy is taken away in all Burglary.

By the Statute of the 10th and 11th *Shoplifting*
of *W.* All Persons who, by Night and *10 & 11 W. 3.*
Day, shall in any Shop, Ware-house, Coach-house, or Stable, privately and feloniously steal any Goods, Wares, or Merchandizes of the Value of Five Shillings, or more, tho' such Shop, &c. be not broke open ; and tho' the Owner, or any other Person, be, or be not in
F such

such Shop, &c. or that shall assist in committing such Offence, being thereof convicted, or standing mute, or challenging above twenty three of the Jury, shall lose the Benefit of Clergy. By the same Statute, among other Things, it is also enacted, That all Persons convicted of Theft or Larceny, within the Benefit of Clergy, shall, instead of being burnt in the Hand, be burnt with the usual Mark in the most visible Part of the left Cheek, nearest the Nose, in open Court, in Presence of the Judge, but this is repeal'd.

By 5 Ann. a Reward of 40*l.* is given for apprehending a Burglar.

No Clerk of Assize, Clerk of the Peace, or other Person, shall take any Fee of Persons bound by any Justice of Peace to appear as Evidence against any Traitor or Felon, for Discharge of their Recognizance; nor shall take above two Shillings for drawing any Bill of Indictment, against any such Felon, under Penalty of five Pound to the Party aggrieved, with full Costs of Suit.

If any Clerk of the Assize, Clerk of the Crown, Clerk of the Peace, Clerk of the Indictments, or other proper Officer, their Clerks or Deputies, draw any Bill false, they shall draw new Bills gratis, or forfeit five Pound, with full Costs of Suit, to be recovered by those

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who will Sue for the same, by Action of Debt, &c. where no Effoign, &c. shall be allow'd.

Robbery, is a Felonious and Violent taking away from the Person of another Money or Goods of any Value, putting him in Fear. Robbery:
3 Inst. 60.

If a Thief, with or without Weapon drawn, bid the Party deliver his Purse, and he does it, this is a Taking, to make it Robbery.

If a Thief command a Man to deliver his Purse, and he deliver, and the Thief finding little in it, deliver it back, this is Robbery. H. 2. C. 71.

If a Thief compel a true Man by fear, to swear to fetch him a Sum of Money, which he does accordingly, and the Thief receive it, 'tis Robbery.

If the true Man seeking to escape, casts his Purse into a Bush, or lets fall his Hat, if the Thief take it, 'tis Robbery.

Taking away any Thing in a Man's Presence, is in Law a Taking from the Person.

Taking away a Man's Horse standing by him, and against his Will, is a taking from the Person: But if one leaves his Horse ty'd at a Distance, it is not a taking from the Person, or Robbery.

If a Servant is robb'd of his Master's Goods in the Sight of his Master, it shall

shall be taken for a Robbery from the Person of the Master.

3 Inst. 60.
69

But where any Thing is taken from the Person on the Highway, without putting in Fear by Assault or Violence, 'tis no Robbery, but a Felony, for which the Offender shall have Clergy. And if there be only an Assault to Rob, without taking any Money, &c. it is not Felony, but a Misdemeanor, punishable by Fine and Imprisonment, &c.

13 E. 1.

If a Robbery be committed on the Highway in the Day-time, of any Day except Sunday, the Hundred is chargeable, if the Robber be not taken: And immediately when a Robbery is committed, *Hue and Cry* is to be made after the Robbers from Town to Town, and County to County, by Horsemen and Footmen, to the Sea Side. The Constable, on the Person's being described, is to call upon the Parishioners to assist him in the Pursuit, in his Precinct; and if the Offender be not there, to give Notice to the next Constable, who is to do the same as the first.

Persons neglecting to make *Hue and Cry*, or who do not pursue it, may be punished by Fine and Imprisonment.

4 & 5 W.
& M.

A Reward is order'd by Law of 40*l.* for the Apprehension of a Robber on the Highway, to be paid by the Sheriff, on Certificate from the Judge, of the Con-

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viction of the Offender ; and the Apprehender is likewise entitled to the Horse, Furniture, Arms, Money, &c. of the Highwayman, saving the Right of those from whom taken.

An Offender, out of Prison, impeaching two others, so as they are convicted, shall have his Majesty's Pardon.

If a Shopkeeper deliver Goods to one who pretends to buy them, and he runneth away with them, it is Felony : If

H. P. C. 64.

Kel. 82.

6 & 7 W. 3.

Larceny.

one comes on Pretence to buy a Horse, and the Owner gives him leave to ride him to try his Paces, and he rideth away with him, it is Felony. If a Guest hath Plate set before him in a Tavern or Inn, it is Felony to take it away. Stealing Goods and Chattels which Persons by Contract are to use, is Felony ; And if one lends or delivers Goods to others to keep, or to Work-People, and they steal them, it is Larceny.

Goods stolen must not be of a base Nature, as Dogs, Cats, &c. Nor shall it be Felony to take Apes, Monkies, Bears, Squirrels, Parrots, &c. But the taking away Geese, Ducks, Poultry, &c. which are Man's Food, is Felony.

The secret taking away of another Man's Goods, with an Intent to steal the same, is Theft : And if the Goods taken away, amount to the Value of Twelve-pence, it is Felony, and punish-

1 Edw. 3.

cap. 22.

able with Death; but if the Goods taken away be under the Value of Twelve-pence, it is called Petit Larceny, for which the Offender shall not die, but is to suffer some corporal Punishment, as Whipping, &c. according to the Direction of the Judges or Justices, before whom he is convicted.

It is thought by some horrible and grievous, that a Man's Life (the Life of a Christian) or any of the Members of his Body should be taken away for so small a Value as thirteen Pence. It is very plain, that the Statute of 3 Ed. 1. cap. 15. declaring what Prisoners are bailable, says, amongst other Offences, (*viz.*) or for Larceny, which amounteth not above the Value of Twelve-pence: Nay, K. Athelstane's Laws, begin with Thieves, and speak thus, *First, that a Man spare no Thief that is in the Manner, having in his Hands taken above Eight-pence.* A Ram in the Saxons Time was worth but Four-pence: And that which was heretofore sold for Twelve-pence, would now be worth Forty Shillings.

In the Assize of Bread, (long after the Saxons) in the 51 Hen. 3. eight Bushels of Wheat are valued but at Twelve-pence. In the Time of Ed. 3. a Bushel of Wheat was but Ten-pence; a Hay-maker had but a Penny a Day, Reapers of Corn Two-pence, an Acre to be mowed

3 Edw. 1.
cap. 15.

25 Ed. 3.
cap. 1 & 3.

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mowed for Five-pence, Threshing a Quarter of Wheat or Rye but Two-pence, a Master Carpenter Three-pence a Day, and his Man Two-pence, a Free Mason Four-pence, others Three-pence, their Boys One Penny, Plaisterers and their Knaves (so nam'd in the Act) in the same Manner, and to find themselves Meat and Drink. And by the Statute of 6th *Hen.* 8. of much later Time, the yearly Wages of a Bailiff of Husbandry was but Sixteen Shillings and Eight-pence, and for cloathing of him Five Shillings, with Meat and Drink; a chief Hind or Shepherd Twenty Shillings, and for his Cloathing Five Shillings; every common Servant Sixteen Shillings and Eight-pence, for Cloathing Four Shillings: No Woman Servant above Ten Shillings, her Cloathing Four Shillings, and no Master might have given more.

And tho' *Twelve-pence* keeps not to the old Rate, but the modern; yet Things are prized in Trials of Life, far below their Worth, and no Man loseth his Life (in a single and simple Felony) but where the Thing stolen riseth to more than many Twelve-pences (especially after the old Estimate) but indeed the Quality of the Offender, Circumstances of the Offence, and of the Times, are mainly considerable in our Law, where

any Life is taken away in such a Felony.

4 Georgii. By a late Act, Persons convicted of Felony, Larceny, &c. within the Benefit of Clergy, are to be *Transported* to the Plantations for Seven Years, instead of being burnt in the Hand or whipp'd: And Criminals convicted of Capital Crimes, for which Clergy is taken away, may be pardon'd on Condition of Transportation for 14 Years, &c. *Vide* the Statute.

And it is enacted by the same Statute, That if any Person shall take a Reward for helping another to stolen Goods, and do not prosecute the Felon, he shall be guilty of Felony.

*Dalt. 396.
Accessaries.*

An Accessary to Felony, is he that is not the chief Actor, but one concerned in the Felony, before the Fact; as where a Man encourages, advises, or abetts a Felony, but is absent when the Thing is done; for if he be present at the committing of the Felony, then he is Principal: Accessaries after the Fact, are those who willingly receive Felons, or relieve, assist, or aid them, knowing they have committed Felony.

Persons Buying or Receiving stol'n Goods knowingly, are Accessaries to the Felony committed. And if the Owner of stol'n Goods, after Complaint
Lamb. 285: to a Justice, shall compound with the Felon,

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Felon, or consent to his Escape, this may make him Accessary after the Fact; but if before Complaint made to a Justice, in Pursuit he retaketh his Goods, and suffereth the Felon to escape, this is a Misdemeanor only, for which he may be fined.

Accessaries to Felony, before and after the Fact, are in many Cases excluded the Benefit of Clergy.

Thus much for Felonies, &c. of all Sorts.

Now touching the Offenders, as well in Case of Treason, as in Case of Felonies, &c. there is this Difference.

IN Case of Treasons, such as desire or procure Treason to be committed, tho' they are not present at the Acting, they are principal Traitors; and so are such as receive and relieve a Traitor, knowing him to be so, after the Treason committed.

But in Case of Felony, there may be Accessaries.

As the Rescue of a Traitor from Arrest, and the wilful Escape of a Traitor is Treason; so the Rescue and Escape of a Felon is Felony.

And

And if a Man for Treason or Felony do break Prison, whether he be guilty or not, it is Treason or Felony in him that breaks the Prison.

Having now given you a brief Account of every Capital Offence, for which the Offender is to suffer Death by the Law: I shall proceed to the second main Branch of Offences: Namely,

*Offences
Fineable:*

Offences Fineable, or Contempts against the Law, for which the Offenders are not to suffer Death, but are to be punished for the most Part with Fine and Imprisonment. And these Offences are of three Kinds, either against the temporal Laws made for the Maintenance of the Honour and Service of God; or against the Crown and Dignity Royal, immediately and especially; or against the Common-wealth in general. The principal Offenders against the Temporal Laws which are in Force in this Realm, for the Maintenance of God's Holy Religion and Service, are against such as are guilty of any Immorality and Prophaneness whatsoever; and these Laws we are earnestly exhorted to put in vigorous Execution; and are these which follow:

If any Person having been educated in, or at any Time having made Profession of the Christian Religion within this Realm, shall by Writing, Printing, Teaching,

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Teaching, or advisedly Speaking, deny any one of the Persons in the Holy Tri-^{Blasphemy}nity to be God, or shall assert or main-^{9 & 10.}tain there are more Gods than One, or shall deny the Christian Religion to be true, or the Holy Scriptures of the Old and New Testament to be of Divine Authority, and shall be lawfully convicted thereof, by the Oath of Two credible Witnesses, such Offender shall for the first Offence, be adjudg'd incapable, and disabled in Law to all Intents and Purposes, to have or enjoy any Office or Employment, Ecclesiastical, Civil or Military whatsoever; and if at the Time of Conviction he is posselt, &c. such Office, Place, or Employment shall be void. On the second Conviction, shall be disabled to sue, prosecute, plead, or use any Action, or Information in any Court of Law or Equity; to be a Guardian, Executor or Administrator, or capable of any Legacy or Deed of Gift, or of any Office, Civil or Military, or Benefice Ecclesiastical, and shall suffer Three Years Imprisonment, without Bail, from the Time of the Conviction. And Books and Pamphlets against our Religion, as well as Libels against the Government, are also presentable and punishable.

If any Persons shall profanely swear^{Swearing.} or curse, they are punishable by the^{21 Jac. 1.} Laws^{6 & 7 W. 3.}

Laws and Statutes of the Realm; if they are Servants, Labourers, common Soldiers, Seamen, &c. the Penalty is 1 s. for the first Offence, for the second double, and for the third Offence treble; leviable by Distress, by a Justice's Warrant; and every other Person, not being a Servant, Labourer, Soldier, &c. shall forfeit for the first Offence 2 s. for the second double, and for the third treble; to be levied by Distress; and if there be no Distress, the Offender is to be set in the Stocks One Hour, &c. but if the Offender be under 16 Years of Age, then he is to be punished with Whipping. If a Justice of Peace neglects his Duty in putting the Laws in Execution against profane Swearers, he shall forfeit 5 l.

This Sin (which is as it were a Defiance of God) is of all others the most unaccountable, as having no Profit or Advantage attending it, which most others have for their Countenance and Encouragement.

Lord's Day.
29 Car. 2.
cap. 7.

All Laws in Force concerning the Observation of the Lord's Day, shall be put in Execution: This Day is by every one to be sanctified and kept holy; and all Persons must be careful herein, to exercise themselves in the Duties of Piety and true Religion, publickly and privately; and every one on this Day (not having

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having a reasonable Excuse) must diligently resort to some publick Place, where the Service of God is exercised, or be present at some other Place (allow'd by Law) in the Practice of some Religious Duty, either of Prayer, Preaching, Reading or Expounding of the Scripture, or Conference upon the same. Now tho' his Majesty's Protestant Subjects dissenting from the Church of *England*, and qualified according to the Statute of Indulgence, are exempted from the Penalties of the Statutes, 3 *Jac.* 1 *Eliz.* 23. 29 *Eliz.* and some other Statutes. This Indulgence extends not to such prophane Persons, who nowhere attend on the publick Worship of God establish'd, or allow'd by Law; nor to any that in Preaching or Writing deny the Trinity.

If any Person therefore (except Dissenters before mention'd) do not repair to Church on *Sundays* and *Holy Days*, he shall forfeit Twelve-pence for every *Sunday*; and Twenty Pound *per Month* by the 23 *Eliz.* cap. 1.

If any come not to the Sacrament of the Lord's Supper once a Year, they shall forfeit Forty Shillings to such as present them.

None shall speak or do any thing in Contempt of the most Holy Sacrament.

Under

Under this Head may be included all those Laws, which are made for the Observation of the Lord's Day.

Such as meet or assemble out of their own Parish upon the Lord's Day, for any Sports or Pastimes whatsoever: Or such as shall use any unlawful Exercise or Pastime in their own Parish upon the Lord's Day, shall forfeit Three Shillings and Four Pence to the Poor for every Offence.

1 Car. c. 1. If any Butcher, or any other for him, shall kill or sell any Victuals upon the Sunday, he forfeits Six Shillings and Eight Pence.

2 Jac. c. 22 If any Shoemaker shall shew, with Intent to sell, any Boots, Shoes, &c. on a Sunday, he shall forfeit the Value of every Pair, and also Three Shillings and Four Pence for every Pair.

29 Car. 2. cap. 7. If any Person of the Age of Fourteen Years, shall on the Lord's Day, or any Part thereof, do any worldly Business, Labour or Work, &c. except Works of Necessity and Charity, he shall forfeit Five Shillings.

If any Person shall cry, shew forth, or put to Sale, any Wares, Fruits, Goods, &c. (except Milk only) he shall forfeit the said Ware, Fruit, Goods, &c. to the Use of the Poor.

No Drover, Horse-courser, Waggoner, Butcher, Higler, or any of their Ser-

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vants shall travel or come to their Inns on the Lord's Day, under the ^{29 Car. 2.} Penalty of Twenty Shillings for every ^{cap. 7.} Offence.

No Person shall use to travel on the Lord's Day with any Boat, Wherry, &c. unless he be licensed by a Justice, under Penalty of Five Shillings.

^{1 W. & M.}

Whosoever shall disturb any Preacher ^{cap. 18.} allow'd in his open Sermon or Collation, or be procuring or abetting thereunto, he shall suffer three Months Imprisonment without Bail.

Moreover, for the Honour which Men ought to bear to the Places of religious Exercises, by the ancient Statute of *Winchester*: If any Man do keep any Fair or Market in the Church-yard, he is to be punish'd with Fine and Imprisonment: Or if any Man do fight, or strike another in the Church or Church-yard, he is to be punish'd with the Loss of one of his Ears. ^{1 Ed. 5. c. 4.}

*Contempts.
Misprisions.*

The Contempts immediate against the Crown, are of a higher Nature, and are known by the Names of Misprision and Premunire. *Misprision* is either of Treason or Felony.

All Treason includes Misprision: The concealing of any Treason is declared Misprision only by the Statute ^{1 & 2 M.} ^{cap. 10.} But this is in Case of bare Knowledge

ledge; for if there be Knowledge and Assent, it is Treason.

G.P. l.c. 64.

He that receives and comforts a Traitor knowingly, be it Counterfeitor of Coin, or other, is a Principal Traytor, and not only guilty of Misprision. *Abingdon's Case* against the Opinion in *Dyer* 269. *Conier's Case*.

Discovery by one of the Grand Inquest of the Persons indicted, or Evidence against them, is Misprision punishable by Fine and Imprisonment.

A Person dissuading Witnesses from bringing in Evidence against a Felon is no Accessary, but a great Misprision and punishable by Fine and Imprisonment. Reproaching a Judge, assaulting an Attorney against him, or abusing a Juror that gave Verdict against him, is great Misprision, and punishable by Fine and Imprisonment.

Rescuing a Prisoner from the Bar of *King's Bench*, *Chancery*, *Common Pleas*, or *Exchequer*, is a Misprision; for which the Offender shall lose his Hand, Goods, Profits of Lands, during Life, and suffer perpetual Imprisonment.

If a Man strike, during the Sitting of the Four Courts at *Westminster*, in Presence of the Court, the like Judgment.

By the Statute of 33 Hen. 8. cap. 12. Striking in the King's Presence, drawing

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By the Statute of 14 *Eliz. cap. 3.* Forging of Money not current, Misprision of Treason.

A Stranger uttering false Money made within this Realm, knowing it to be Counterfeit, is Misprision, by 3 *Hen. 7. cap. 10.* ^{3 Hen. 7. cap. 10.}

If any Bull of Reconcilement to the See of *Rome* have been offer'd to any Subject, if the Subject to whom it has been offer'd, do not reveal this Offer made unto him, within six Weeks, this is also Misprision of High-Treason, by 13 *Eliz. cap. 12.* and 23 *Eliz. cap. 1.* ^{13 Eliz. cap. 12. 23 Eliz. cap. 1.}

Premunire, is properly and originally a Writ or Process of Summons, awarded against such as did bring in Bulls or Citations from the Church of *Rome*, either to obtain Ecclesiastical Benefices by way of Provision, before the same fell or become void, or to draw the King's Subjects by way of Appeal from the Justice of the Realm, to answer Suits in the Court of *Rome*.

These Acts were adjudged High Contempts against the Crown, in sundry Parliaments in the Time of *Ed. 1. Ed. 3. Rich. 2.* and a grievous Penalty inflicted against the Offenders in that Kind: ^{*Ed. 1. Ed. 3. Ric. 2.*} Namely, that they should forfeit all

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their Lands and Goods, and be put out of the King's Protection, so as every Man might do with them, as with the Enemies of the King and this Realm.

This was the proper Case wherein the Process of *Premunire* was awarded in ancient Time; but of later Years, the same heavy Penalty hath been impos'd by divers Acts of Parliaments in other Cases of Contempt against the Crown, namely, in the Cases following:

If any Man do wilfully and advisedly extol the Authority or Jurisdiction of any Foreign Prelate, or Prince, within this Realm, he is in the Case of *Premunire*, by the Statute of 5 *Eliz. cap. 1.*

If any Man do wilfully, and advisedly refuse the Oath of Supremacy, he is in the same Case, and by the same Statute.

If any Man, being above Eighteen Years, shall refuse to take the Oath of Allegiance, he incurreth the same Danger of *Premunire*, by the Statute of the 3 *Jac. cap. 4.* But now by the Statute of the first of *W. and M. cap. 8.* No Person shall be obliged to take the Oaths of Allegiance and Supremacy, or either of them, by Force of the Acts of 1 *Eliz.* or 3 *Jac.* or any other Statute, but new Oaths are by the said Act appointed to be taken instead of the former.

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And by the Statute of the first of *W. and M. cap. 18.* neither the Statutes *1 W. & M. cap. 2.* of 23 *Eliz.* the 29th of the said Queen, the 3d of King *James* nor any Statute made against Papists or Popish Recusants, shall be constru'd to extend to any Persons dissenting from the Church of *England*, that shall qualify themselves according as that Act directs.

If any Man do bring from *Rome*, any *Agnus Dei*, Crosses, hallow'd Beads, or such superstitious Trifles, and deliver the same to any of the King's Subjects; and if any Subject do receive the same, and do not apprehend the Bringer thereof, and within three Days disclose the same to the Bishop of the Diocese, or to some Justice of the Peace, he likewise is in the Case of Premunire, by *13 Eliz. cap. 2.* the Statute of 13 *Eliz. cap. 2.* and 23 *Eliz. cap. 1.* *Eliz. cap. 1.*

If any Man do send any Money, or other Relief, out of this Realm, unto a Jesuit or Popish Priest, such an Offender is likewise subject to the same Penalty, by the same Statute of 28 *Eliz. cap. 1.* *28 Eliz. cap. 1.*

Lastly, Whereas it was conceived, that a Man attainted upon a Premunire might be kill'd, or slain by any Man whatsoever, because by the Law he is without the King's Protection; It is provided by another Statute made in the said Queen's Reign, that it shall not be
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lawful to kill or slay any Person attainted upon a Premunire under Pretence, or by Reason of any such Attainder, or by any Law, Statute, or Opinion to the contrary notwithstanding.

Contempts or Offences Fineable against the Common-wealth, are of Five Kinds.

Being either,

1. Against the *Publick Justice*.
2. Against the *Publick Peace*.
3. Against the *Publick Profit* of the King's People.
4. Against the *Publick Health*, and general *Easements*, or convenient *Recreations* and *Pleasures* of the King's Subjects. Or,
5. *Publick Nuisances*, to the Damage and Destruction of the King's Subjects.

The Offences against the Publick Justice, do tend to the Perverting or Abuse of Justice, or to the Scandal and Dishonour of Justice.

The several Kinds, are these :

Perjury.
C.P.c.164.
5 Eliz. c.9.

PERjury is a Crime committed, when a lawful Oath is ministred by any that hath Authority, to any Person, in Judicial Proceedings, who sweareth absolutely

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absolutely and falsely in a Matter material to the Issue, or Cause in Question, by their own Act, or by the Subornation of others.

Altho' by the Common-Law, Trial of Matters of Fact are by the Verdict of Twelve Men, &c. and Deposition of Witnesses is but Evidence to them; yet for that most commonly Juries are led by Deposition of Witnesses, Perjury of Witnesses was severely punish'd by the ancient Laws of this Realm; Perjury itself being forbidden by the Law of God, *Thou shalt not swear by my Name falsely, neither shalt thou profane the Name of thy God.* Levit. 19. 12. *Thou shalt not forswear thy self, but shalt perform to the Lord thine Oath.* Mat. 5. 33. The Punishment of Perjury in Jurors, for a false Verdict, was so severe by the Common Law, as few or no Juries were upon just Cause convicted.

Which shews how odious Perjury was in the Eye of the Law, and this Law doth yet remain in Force: But a milder Punishment is set down, by the Statute 23 Hen. 8. wherein the Party griev'd hath Election to ground his Writ of Attaint upon this Statute, or take his Remedy at Common Law. By the Statute of the 5th of Eliz. c. 9. The Offender is to forfeit 20*l.* to suffer 6 Months Imprisonment without Bail, and be ever

after disabled to give Evidence in any Court of Record, until the Judgment given against him for that Offence be revers'd; and if he be not able to pay the Fine, he is to be set upon the Pillory in some Market Place, and to have both his Ears nail'd thereunto.

He that shall suborn a Witness to give Testimony in any Court of Record, concerning any Lands, Goods, Debt or Damage, shall forfeit 40*l.* and be for ever disabled to give Evidence, and be farther punish'd as in the Case before.

Bribery.

Bribery is where any *Judicial Officer* shall take Gifts or Rewards to pervert Justice, or shall bribe the Grand Inquest to make favourable Presentment.

Extortion.

And if any Officer, by Colour of his Office, exacteth and forceth any Man to pay any thing that is not due, or before the Time it is due, or above what is due, this is Extortion. In both which last Cases, the Offender shall be punish'd by Fine and Imprisonment, and render double to the Party griev'd.

Coroner.

A Coroner is Fineable if he refuse to do his Office without Fee, when a Man is slain by Misadventure.

It were heartily to be wish'd, the Wisdom of the Parliament would think fit to review the Fees of all Courts and Officers; and that in the mean Time, the Reverend the Judges of the Law would

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would ascertain the Fees of their Officers, and let them be publickly known to every honest Freeholder in *England*.

If a Man be a common Barreter, or *Barretry*, Stirrer up of Suits and Quarels among the King's People, which otherwise would be in Peace.

Maintenance, is a Taking in Hand, *Cok. Lit. Maintenance*, Bearing up, or Upholding of Quarels, or Sides, to the Disturbance or Hindrance of common Right.

If one of the Jurors in an Inquest, shall give, or promise Money to another of his Fellows, to give his Verdict for Plaintiff or Defendant, this is *Maintenance*, tho' it be according to the Truth of the Cause; But if one of them do perswade his Companion to pass for one Side or other, as he conceiveth the Truth of the Cause to be, and as the Evidence does induce; this is no *Maintenance*.

If one give a Juror Money to appear *17 Ed. 4. 5. 18 Ed. 4. 4.* and give his Verdict on one Side, this is *Maintenance*, tho' he do never appear, or do appear, and not serve, *22 Hen. 6. 6.*

If one do threaten to beat or kill a Juror if he do not give his Verdict on one Side, this is *Maintenance*, tho' he give his Verdict on the other Side.

If one come to a Juror of his own *22 Hen. 6. 6.* Head, and offer to instruct him of the Matter in Question, this is *Maintenance*.

But if the Juror come to the Party, and desire him to instruct him, *contra*, 22 Hen. 6. 6.

Champerty. *Champerty* is, and *Champertors* are they that move Pleas and Suits, or cause to be moved, either by their own Procurement, or of others, and sue them at their proper Costs, to have Part of the Land, or Part of the Thing in Question, or Variance. And this is a Species of *Maintenance*; for every *Champerty* is *Maintenance*.

Embracers. *Embracers* are such, as when a Matter is in Trial between Party and Party, come with the Party to the Bar (having received some Reward so to do) and speak in the Case, or privily labour the Jury, or stand there to survey, or over-look them, thereby to put them in Fear or Dread of the Matter, or the like.

Informers. If a common *Informers*, upon penal Statutes, do compound with the Parties against whom he doth inform, without Leave of the Court in which the Information is preferi'd. These Offences do apparently pervert, abuse, or dishonour the publick Justice of the Nation.

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The Offences against the Publick Peace, do consist either in Violence or in Negligence.

OF the first kind are Riots and Routs, unlawful Assemblies, forceable Entries, and forceable Detainers of Lands and Tenements, Maims, Batteries, and all manner of Trespasses ; to ride or go arm'd to the Terror of the King's People, contrary to the Statute of *Northampton*, to lie in wait to Maim, Kill, or the like.

By a late Statute, if any Persons, to the Number of 12 or more, shall unlawfully, riotously, and tumultuously, assemble together, to the Disturbance of the Publick Peace, and being required by a Justice, Sheriff, Mayor, Bailiff of any Town, &c. by Proclamation, immediately to disperse themselves, and peaceably depart to their Habitations or lawful Business, shall continue together one Hour after such Proclamation made, they shall be guilty of Felony.

And hindering or obstructing such Proclamation, or hurting any Person going to make the same, is Felony ; and Persons continuing together an Hour after such Hindrance, is the same. The Rioters are to be seiz'd and apprehended ; and if any of them are kill'd or wounded

ed in Apprehending, the Persons doing it shall be indemnified for the same. *Vide* 1 Geo.

And by a Statute made in the 10th Year of King George, Persons going abroad arm'd, in Masks and Disguises, robbing Parks, and committing Violence and Outrage on the King's Subjects, are to suffer as Felons.

For the committing of a Riot, there must be three or more Persons assembled for that Purpose; but if divers Persons be lawfully assembled, and fall out on a sudden among themselves, this is no Riot, only an *Affray*.

And where any Affray is committed, by two or more Persons skirmishing or fighting, the Constables are to suppress them; or they shall be fined for their Negligence; and any Spectator may put a Stop to Affrayers assembled in a tumultuous Manner, and apprehend the Offenders, where a Person is dangerously wounded.

Of the second Kind of Offences, is the Negligence of Constables, in following the *Hue and Cry*; and of Townships, in keeping of Watches upon the Highways, from Sun-setting to Sun-rising, between *Ascension-Day* and *Michaelmas*, and in Warding also in the Day-time to apprehend Rogues and Vagabonds, and such evil Members, which is of great Use, and

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and must be left to the Discretion of Justices and Constables, to appoint or alter it.

The Negligence of Constables in suppressing Rogues and Vagabonds doth consist in these Points, *viz.* If they do not arrest all Beggars, Rogues, and Vagabonds, and bring them before some Justice of the Peace to be punish'd as the Laws direct, particularly the Statute 12 *Annæ*. As a Reward for ^{12 *Annæ*} which they shall have 2*s.* for each Vagabond apprehended, payable by the Officer of the Place where such Vagabond was found begging unapprehended.

Wandering Patent Gatherers and Collectors for Prisons, Fencers, Bear-wards, common Players of Interludes, Jugglers, Gypsies, or Persons wandering in their Habit or Form; Pretenders to Physionomy, Fortune-tellers, Users of subtil Craft, or unlawful Games, able body'd Persons, who run away and leave their Wives or Children to the Parish, Persons refusing to work for common Wages, not having otherwise to maintain them, and other idle Persons wandering abroad and begging, are adjudg'd Vagrants by the Statute.

Where such Vagrant is apprehended and brought before a Justice, he is to examine of his Condition and Circumstances,

ances, and his Place of Abode or Birth, upon Oath as well of the Party as of any other ; and if it appear such Person has obtain'd any legal Settlement, then he is to be sent to his Place of Settlement ; but if it cannot be found he hath gained any legal Settlement since his Birth, then the Justice is by Pass under Hand and Seal, (directed to the Constable) to cause the Vagrant to be convey'd to the Place of Birth ; or if he be under the Age of 14, and have Father or Mother living, to the Place of Abode of such Father or Mother ; and if that be not known, to the Parish or Place where found last begging, and he pass'd unapprehended.

Persons refusing to be examin'd upon Oath, or giving a false Account of themselves, their Birth, Settlement, &c. Or after convey'd to their Place of Settlement, found wandering again and begging, shall be deemed incorrigible Rogues, be committed to the House of Correction, there to remain and be kept to hard Labour during such Time as the Justices shall think fit, and be publicly whipp'd three Market Days successively ; and if they shall break out and make their Escape, they shall be guilty of Felony.

And these are Offences against the Publick Peace, consisting either in Violence or Negligence.

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The Offences against the Profit of the King's People, are either Extortions, which do imply a kind of Force, or Fraud and Deceit.

HAVING mention'd Extortion before, I shall only add, that if Ordinaries, or their Officials exact more for the Probate of a Testament, or granting Letters of Administration, than is limited by the Statute of 21 Hen. 8. cap. 5.

If a Sheriff or Under-Sheriff take greater Fees, than are contain'd in the Statute of 23 Hen. 6. cap. 10.

23 Hen. 6.
cap. 10.

If Coroners, Clerks of the Market, Clerks of the Assize, or of the Peace, Bailiffs, Goalers or any other Officers, or Ministers of Justice, by Colour of their several Offices, do exact or extort more or greater Fees, than are by Law appointed them, whereby they impoverish the King's Subjects, and enrich themselves; these are against the Publick Profit.

Frauds and Deceits, whereby the King's Subjects are impoverish'd, are used for the most Part in the Making, Buying, and Selling of Commodities necessary for the Life of Man. And these Frauds are either General or Particular.

General

General Frauds have Relation to all Manner of Commodities, and the Offenders are such as buy and sell by false Weights and Measures, not agreeable to the King's Standard, nor mark'd or sign'd

11 Hen. 7. according to the Statutes in that Case
cap. 4. made and provided.

8 H. 6. Every City, Borough, and Market
22 Car. 2. Town, shall have a common Balance,
cap. 8. with common Weights, seal'd according

to the Standard of the Exchequer, in the Keeping of the head Officer or Constable, or shall forfeit 10*l.* the City, 5*l.* a Borough, and 40*s.* a Town, to the King : And shall also have a common Bushel sealed, under the like Penalties.

And if any Person shall sell, or buy by, or keep any Weight or Measure, which is not according to the Standard of the Exchequer, he shall forfeit 5*s.* to the Poor.

5 & 6
Ed. 6.

Fore-stallers, which do buy up Commodities upon the Way, before the same come to the Market.

Regrators, which buy Corn and other Victuals in the Market, and sell in the same Market, or any other within four Miles thereof.

Engrossers, which do buy great Quantities of Corn and other Victuals, and sell the same again.

These Offenders, for the first Offence forfeit the Goods, and are to suffer two Months

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Months Imprisonment; for the second Offence, double the Value of the Goods, and six Months Imprisonment; and for the third Offence, the Offender loseth all his Goods, is to stand in the Pillory, &c.

Such as exercise Trades, which they have not been brought up in as Apprentices, according to the Statute of 5 Eliz. Artificers leaving the Kingdom. 5 Eliz. 5 Geo.

Those as deceitfully get into their Hands other Mens Goods by false Tokens, or Counterfeit Letters, which is made very penal by the Statute of 33 Hen. 8. cap. 1.

Such as should keep Toll-Books, in Markets and Fairs, and neglect to do it. All these are Offenders in general against the Publick Profit.

Particular Frauds are divers, according to the Diversity of Things that are useful, and necessary for Man's Life: Namely, Meat, Drink and Apparel, Furniture of Houses, Labourers, Servants, Apprentices.

A Baker not observing the Assize of Bread, shall be set in the Pillory. Hen. 8. cap. 1.

And Mayors of Towns, &c. have Power 8 Ann. to regulate the Assize of Bread, and examine into the Goodness thereof: They may enter into any House, Shop, &c. of any Baker, to search for, and try Bread; and if it be found wanting in Goodness,

Goodness, deficient in Weight, &c. or shall consist of any other Sort than what is allow'd, the Bread shall be seized, and distributed to the Poor. Also a Penalty of 40 s. is inflicted by this Act, for Want of Weight.

1 Geo. But by a late Statute, the Penalty is 5 s. for every Ounce wanting in Weight, and 2 s. under an Ounce, on Complaint made to a Magistrate in 24 Hours.

If a Brewer brews with Molasses, Sugar, Honey, or Extract of Sugar, he shall forfeit the Liquor, and One Hundred Pounds, by the Statute of **1 W. and M.**

13 & 14 Gul. No common Brewer, Inn-keeper, Vi-
taller, or other Retailer of Beer or Ale, shall make Use of any Sugar, Honey, Foreign Grains, *Guinea* Pepper, *Essentia Byne*, *Coccus Indie*, or any unwholesome Matetials, in making Beer or Ale; or mix any Sugar, Honey, Foreign Grains, &c. with any Beer or Ale in Cask, after the Cleansing, on Penalty of Twenty Pounds.

2 W. & M. cap. 14. If any Person sell Wine by Retail in Bottles, or any Measure but Pewter seal'd, according to Law, he shall forfeit 50 s.

By the Statute of **11 and 12 of W. 3. c. 15**, it is enacted, That all Persons Retailing Ale or Beer, and every Person keeping any publick House, for Retail-
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ing and Selling Ale and Beer, shall sell by a full Ale Quart, or Pint, according to the Standard in the *Exchequer*, or City of *London*, in a Vessel made of Wood, Earth, Glass, Horn, Leather, Pewter, or some other wholesome Metal, marked from the said Standard in the *Exchequer*, or City of *London*, or some other Place where a Standard shall be kept, and not in any other Vessel not mark'd, on the Forfeiture of a Sum not exceeding 40 s. nor under 10 s.

The Sub-commissioners, or Collectors of the Excise, shall procure Ale Quarts and Pints of Brass, according to the Standard, and deliver them to every chief Officer of Cities, Corporations, and Market-Towns, where they have them not before; the Collector to forfeit on Default Five Pounds.

Every Mayor or chief Officer of each City, &c. or Market-Town, shall, on Request, cause all such Ale Quarts and Pints, made of Wood, Earth, &c. as shall be brought to him, to be measur'd and siz'd by such Standard, and mark'd with G. R. and a Crown, which Marks the said Mayor, or chief Officer, are to provide, and to take not above a Farthing for marking each Measure. The Mayor, or chief Officer, not doing his Duty herein, to forfeit Five Pounds, and treble Damages to the Party aggrieved.

griev'd. One Moiety of all the Penalties in this Act shall go to the Poor of the Place, and the other to the Prosecutor, upon the Oath of a credible Witness, before a Justice of Peace, and Prosecution be within 30 Days after the Offence committed, and the Justice to levy the Penalty. I have been the larger on this Act, because it is thereby required to be given in Charge by the Justices of Peace to the Juries at the Quarter Sessions.

If Millers take excessive Toll, or by undue Measure, they are to be amerced, *3^d Ed. 1.* or fined by the Statute *de Pistoribus*.

The Miller ought to take but one Quart for grinding one Bushel of hard Corn, and if he fetch and carry back the Grist to the Owner, he may take two Quarts. Now, hard Corn is intended, Wheat, Rye, and Mestin; and for Malt, he shall take but half so much Corn as he should take for hard Corn, because it is more easily ground: But if he fetch and carry back the Malt, he shall have double Toll. *Crompt. 221, 224.*

If Victuallers and Artificers do conspire to sell at certain Rates and Prizes, contrary to the Statute of *2 Ed. 6. c. 15.*

If any do contract with Artificers to go out of the Kingdom, it incurs a Penalty of 100*l.* and three Months Imprisonment; and the Artificers going a-
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broad, are incapable of Lands, &c. and to be deemed Aliens. *Vide* 1 Geo.

All these are Offenders against the publick Profit of the King's Subjects, and Laws necessary to be put in Execution.

Secondly, Touching Apparel, the Frauds are used in making or dying of Cloth, 13 Ed. 6. contrary to the Statute, 13 Ed. 6. c. 2. ^{c. 2.} 1 Eliz. c. 12. and 1 Eliz. c. 12. ^{c. 12.}

In making of Fustian against the Statute, 12 Hen. 7. ^{12 Hen. 7.}

In making Felts against the Statute, 1 Jac. c. 22. ^{1 Jac. c. 22}

And in making Shoes and Boots against the same Statute.

These are Offences against the Publick in that Kind.

Thirdly, Touching Furniture of Households, and other Necessaries.

The Deceit and Fraud of Goldsmiths against the Statute, 2 Hen. 6. ^{2 Hen. 6.}

Of Pewterers and Brasiers against the Statute, 19 Hen. 7. c. 6. ^{19 H. 7. c. 6.}

Of Upholsterers against the Statute, 11 Hen. 7. c. 19. and 5 Ed. 6. c. 23.

Of Tile-makers against the Statute of the 17 Ed. 4. c. 4.

Plain Tile made shall contain in Length 10 Inches and a Half, and in Breadth 6 Inches and a Quarter, and in Thickness half an Inch and half a Quarter at the least. And every Roof-Tile, or Crease-^{17 Ed. 4. c. 17.}

Tile, shall contain in Length 13 Inches, of the Thickness of half an Inch and half a Quarter at the least. Every Gutter-Tile 10 Inches and a Half. And he that shall sell any that is not so, shall forfeit to the Buyer double the Value, and be further punish'd.

Of Wax-Chandlers contrary to the State, 11 *Hen. 6. c. 12.*

Of Colliers and Woodmongers, contrary to 35 *Hen. 8. c. 17.* 13 *Eliz. c. 25.* 1 *Jac. 22.* 43 *Eliz. 14.* 16 and 17 *Car. 2. c. 2.* 2 *W. & M. Sess. 2. c. 7.*

These are Offences against the publick Profit of that Kind.

Lastly, Touching Labourers, Servants, and Apprentices ; forasmuch as the Fruits of the Earth cannot be improv'd and gather'd, but by Labourers ; neither can Gentlemen, Merchants, or Tradesmen, trade conveniently without Servants ; nor Arts, nor Sciences be continued without Apprentices :

Therefore, if any unmarried Person, having no other competent Means to live, do refuse to be retain'd in Husbandry, or some other Trade, wherein he hath been brought up.

If any Servant do exact greater Wages, or any Master give more than is set down by the Justices.

If any Servant do depart from his Master, before the Time of Retainer be expir'd,

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expir'd, or without Licence, or lawful Warning. If any retained Servant shall make an Assault upon his Master or Mistress : Or if any Man do take an Apprentice in any other Manner than is ^{43 Eliz.} by Law directed, 5 *Eliz.* 4. ^{c. 2.}

By a Statute made the 8 & 9 *W. 3.* 8 & 9 *W. 3.* c. 30. where any poor Children shall be appointed to be bound Apprentices, pursuant to the Act of ^{43 Eliz.} c. 2. the Persons to whom they are appointed to be bound, shall receive and provide for them according to the Indenture ; and upon Refusal so to do, upon Oath thereof made by a Churchwarden or Overseer, before two Justices, he or she so offending, shall forfeit Ten Pounds, to be levied by Distress and Sale of Goods, to be applied to the Use of the Poor of the Parish where such Offence was committed ; saving to such Persons their Appeal to the next Quarter Sessions for that County, whose Order therein shall be final.

All these are likewise Offenders against the Profit of the King's People,

The Offences against the Health and general Ease-ments, and honest Pleasures and Recreations of his Majesty's Subjects, do consist in these several Points.

Nusances.

FIRST, If Butchers or Victuallers, do sell corrupt Meat, or unwholesome Victuals, contrary to 31 Hen. 8. c. 7. they are punishable by Fine, Pilory, &c.

If any Butcher shall conspire to sell Meat but at certain Prizes, he shall for the first Offence forfeit 10*l.* for the second, 20*l.* &c. or be imprison'd and Pilory'd, 2 & 3 Ed. 6.

If Maltsters do make unwholesome Malt, contrary to the Statute, 27 Eliz. c. 14. 2 Ed. 6. c. 10. 1 Jac. 25. 39 Eliz. 16.

Under this Head may be comprehended all Publick Nusances; such as Sinks, Carrion, or the like, which may affect the Air if they be not remov'd

31 Eliz.
cap. 7.
35 Eliz.
cap. 6.

If Cottages and Inmates, which are noisom and pestering, both in City and Country, be permitted contrary to the Statute, 31 Eliz. c. 7. 35 Eliz. c. 6.

No Person shall make, build, &c. any Cottage, unless he assign to it four Acres of Land of Inheritance, being near, and always to be used with it, upon Pain of Ten Pounds.

Every Person that shall uphold, or continue any such Cottage after Con-
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viction, shall forfeit forty Shillings for every Month.

There shall be no Inmate, or more Families, or Households, than one in any Cottage, made, or to be made, upon Pain of Ten Pounds *per Menssem* to the Lord of the Leet, to be paid by the Owner or Occupier.

If the Multitude of poor People, that ^{Poor.} are a very great Nuisance to the Common-wealth, be not provided for according to the Laws in that case made and provided; whereby Provision is made, ^{43 Eliz. cap. 2.} as well to relieve the impotent Poor that ^{44 Eliz. cap. 5.} are not able to work, as to set to work the Poor that are able to work, that they may, in some Measure, relieve themselves. ^{3 & 4 W. & M. &c.}

If these Laws, concerning the Poor, were duly put in Execution, there would be no Beggar in *Israel*. And for the Execution of these Laws, the Makers thereof did principally intrust the Justices of the Peace of every County, who every Year within a Month after Easter, are to appoint Overseers of the Poor in every Parish. These Overseers are to Tax the Inhabitants of their several Parishes with competent Sums of Money, for the daily Relief of the Old, Blind and Lame, which are not able to work, and for Buying convenient Stocks of Flax, Hemp, Wooll, Iron, and other
H 4 Necessaries,

Necessaries, Wares and Stuff, to set on Work such as are able, or to bind poor Children Apprentices to some honest Trade. For this Service the Overseers are to meet every Month, and are to give an Account to the Justices of the Execution of their Office. *vid. Act. 9. Geo.*

Highways.

Secondly, High-ways and Bridges, are publick Easements for the King's People, in their Passage to and fro about their Affairs. And therefore sundry Laws have been made for the Repairing and Upholding of them; namely, 2 & 3 *Phil. & Mar. 5 Eliz. 13. 18 Eliz. 1c. 14 Car. 2. 22 Car. 2.* and some others, which are still in Force, so far as they are not alter'd, or repeal'd, by the 3 & 4 *of W. & M. c. 12.* And by this last Act, the Justices of Peace, in their respective Divisions, are obliged to keep a special Sessions quarterly, for the Execution of these Laws.

3 & 4 *W. & M. cap. 12.*

1 *Geo. 9. 52.*

At the special Sessions, the Justices may, by Writing under their Hands and Seals, order the Reparation of those great Roads which most want Repairing; which shall be first repaired, and in what Time and Manner. The Surveyors of the Highways, are every Four Months to view all Roads, Highways, &c. and give an Account of the State and Condition of them to the Justices, who are to cause Assessments to be made for

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for their Reparation, &c. No Soil shall be permitted to lie in the Highway, on Pain of Forfeiting not exceeding 5 *l.* nor under 20 *s.* And Surveyors may make Drains in Lands adjoining to Highways; or turn any Spring or Water-course out of the Highway into the Ditches, for the better Keeping and Preserving of such Ways.

For the common Repairs of Highways, Six Days are to be appointed for Working on the same, before the Feast of *St. Luke*; and every Man keeping a Horse-Team is obliged to send out a Cart, and two able Men; and every Man keeping Oxen, must send them out, and a Wain, with two Men, or forfeit 10 *s.* for every Day's Default: And where Carts are not used, Horses must be sent, with able Persons, according to the Custom of the Place. Also every Householder, Labourer, &c. must either work himself, or hire a Person to work each of the 6 Days, or shall forfeit 12 *d.* per Day.

And if this Work is neglected, or if you know of any Highways that are not in sufficient Repair, you ought to present them.

Lastly, The honest Pleasures and Re-Game. creations of the better Sort of Subjects, do consist in Hawking, Fowling, Hunting and Fishing,

To

To take away young Hawks, or Hawks Eggs, or to drive away old Hawks from their Eyres. To hawk or hunt with Spaniels in ear'd Corn before it be cut and shocked, contrary to the Statute, 23 *Eliz.* c. 10. 7 *Jac.* 11. 5 *Eliz.* 21. If any Person trace and kill Hares in the Snow, he shall forfeit Six Shillings and Eight Pence.

If any one shall carry, keep, &c. any Gun, Cross-bow, &c. contrary to the Statute 33 *Hen.* 8. c. 6. he shall forfeit Ten Pounds, unless he have One Hundred Pounds *per Ann.*

By the Statute 1 *Jac.* 1. cap. 7. every Person which shall shoot at, kill or destroy, with Gun, or Bow, any Partridge, Pheasant, House - Dove, or Pidgeon, Hearn, Mallard, Duck, Teal, &c. or any Hare; or shall take, or destroy any Partridge, Pheasant, House-Dove, or Pidgeon, &c. with Setting-Dogs, or Nets, or shall trace or course a Hare in the Snow; or shall at any Time take, or destroy any Hare with Hare-pipes, Cords, or any other such Instruments or Engines; the Offender, upon Conviction, shall pay to the Use of the Poor, 20 s. for every such Hare, Fowl, &c. so taken and destroy'd; and 40 s. for having any such Greyhound, Setting-Dog and Nets, with many other Things relating thereunto, too long to be here recited.

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There are many Laws for the Preservation of the Game, but I shall conclude with a few only; one against Deer-stealers, made 3 & 4 of *W. & M. c. 10.* If any Person shall unlawfully course, hunt, take in Toyls, or shall take away any Red or Fallow Deer, in any Forest, Park, &c. he shall for every Offence pay 20 *l.* and for every Deer wounded, taken, or killed, 30 *l.* for Want of Distress, to be imprisoned a Year, and after set in the Pillory at the next Market Town. By the Statute of the 4 & 5 of *W. & M. c. 23.* if any Person, not qualified by Law, do keep, or use any Bows, Greyhounds, Setting-Dogs, Ferrets, Cony-Dogs, Hays, Lurchers, Nets, Tramels, Lowbels, Hare-pipes, Snares, or other Instruments for Destruction of the Game, he shall forfeit for every Hare, Partridge, &c. any Sum not under 5 *s.* nor above 20 *s.* And no Person unqualified shall keep any Net, Angle, Leap-pitch, or other Engine for taking Fish, under Pains and Penalties in that Act mentioned; but these, and some other Acts I have recited, do more properly belong to the Cognizance of the Justices of Peace out of Sessions.

By a late Statute, if any Higler, Chapman, Carrier, Inn-keeper, Victualler, &c. shall have in his or their Custody, any Hare, Pheasant, Partridge, &c. on Proof thereof,

thereof, by one Witness, before one Justice of Peace, he shall forfeit 5 *l.* for every Hare, &c. And Selling, or offering to Sale, incurs the same Penalty. Persons not qualified, keeping Dogs or Engines to destroy Game, forfeit likewise 5 *l.* or shall be sent to the House of Correction for Three Months. 5 *Ann.*

This Statute is made perpetual; and no Lord of a Mannor shall appoint more than one Game-keeper in one Mannor, who is to be entered with the Clerk of the Peace, or not being otherwise qualified, shall be liable to the Penalties above-mentioned.

See 5 *Ann.* c. 14. & 9 *Ann.* c. 25. &c.

The Publick Nufances, to the Damage and Destruction of the King's Subjects, are the following.

*Gaming
Houses.*

ANY Person keeping an unlawful Gaming-house, may be committed by a Justice of Peace, until he find Sureties not to keep such a House for the future, and he shall forfeit 40 *s.* Gamesters may be also committed to Prison, without Bail, until they find Sureties not to play any more, and shall forfeit for every Offence 6 *s.* 8 *d.*

This is ordained by Stat. 33. *H.* 8. But by 10 *Ann.* the Law is more strict and penal as to Gamesters and Sharpers, who

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who are the Ruin and Destruction of many Families. This Statute impowers any two or more Justices to cause such Persons to be brought before them, as have no visible Estates to maintain themselves ; and if they do not make it appear, that the principal Part of their Expences is defray'd without Gaming, then such Justices shall require Securities for their good Behaviour for 12 Months, or commit them.

Any Person playing at Cards, Dice, Tables, or other Game, or Betting, and Losing the Value of 10 *l.* may within Three Months sue for and recover the Money so lost, from the Winner ; and if the Loser do not prosecute for the same, any other Person may do it, and recover the same, and treble the Value, with Costs, one Moiety to the Prosecutor, the other to the Poor. And Notes, Bills, Bonds, or other Securities given for Money won at Gaming, or for Repaying any Money knowingly lent for such Gaming, shall be void.

Further, if any Person shall by Fraud in Playing at Cards, Dice, &c. or by bearing a Share in the Stakes, &c. win any Sum of Money above 10 *l.* at one Time, such Person shall forfeit Five Times the Value of the Sum so won, by Indictment, and suffer such Infamy as in Case of wilful Perjury.

Lastly,

Lastly, If any Person shall assault, beat, or challenge any Person on Account of Money won by Gaming, &c. he shall forfeit all his Goods, and suffer Imprisonment for Two Years.

This is the Substance of this good and excellent Law, which thro' a false Notion of Honour, is very rarely put in Execution.

*Bawdy
Houses.*

The next publick Nufances are Bawdy-houses, which debauch and corrupt the Principles and Manners of the Youth of this Kingdom.

All Bawdy-houses, Ale-houses in By-Places, Brandy-shops, and other Sellers of Drink without Licence, and Masquerades, &c. are to be presented; and those that keep Shuffle-board Tables, and Bowling-Allies, &c. for these Allurements are very fatal to Servants and young Persons, who thereby learn Gaming, lose and squander away their Money, and then rob and pilfer from their Masters or Parents to recruit, and bring them on to Lewdness and their Exit at the Gallows.

There are few of our Malefactors who are executed for Thieving and Robbery, but were driven to their Necessities by the Conversation and Extravagance of lewd Women, who care not what Danger they bring upon others, so long as they themselves live in State
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and Splendor, and are indulg'd in a slothful, lazy Life: But our Laws take Care to prevent this Evil, if Lust were to be confin'd by Law; for a Constable having Information that a Man and a Woman are gone to a lewd House, or about to commit Fornication, &c. may, if he finds them together, arrest the Offenders for a Breach of the Peace, and carry them before a Justice, who may bind them to their good Behaviour. *Dalt. 214.*

A Constable having Information that a Person resorted to a common Bawdy-house, and there kept Company with lewd Women, one Night at Twelve a-Clock, went to the House with others to assist him, and arrested the Offender; and it was adjudged a good Justification, on the Party's bringing an Action of false Imprisonment. *Mich. 13. H. 7.*

Night-Walkers, and lewd Persons, in the Streets of *London*, may be arrested, and carried to the Compter Prison, 'till the Morning; when they are to be examined by a Justice, who may commit the lewd Women to the House of Correction, &c. and bind over the Men to the Sessions.

A Woman, &c. keeping a Bawdy-house, may be indicted at the Quarter-Sessions, and fined for the Offence; and so may likewise

likewise a Frequenter of a Bawdy-house, knowing it to be such a House.

Drunkenness.

The last Thing I have to take Notice of, is Drunkenness, which metamorphoses a Man to a Beast, and makes him liable to the greatest Outrage and Violence on his Fellow Creatures.

Now the Stat. 4. *Jac.* 1. gives Power to Justices, &c. to punish Drunkenness, by imposing a Fine of 5 s. on View, Confession, or Proof by one Witness; or the Offender shall be set in the Stocks Six Hours: And for the second Offence he shall be bound with two Sureties in 10 l. to be of the good Behaviour, or be committed to Prison.

Thus you see Gentlemen, how the Wisdom of the Government from the Beginning, and the Wisdom of Parliaments from Time to Time, have provided a Salve for every Sore, and a Remedy for every Mischief. And you see how the Law extends from the highest Treasons, the foulest Felonies, and the greatest Contempts, of Misprision and *Præmunire*, to take Order for Rogues and Vagabonds, Ale-houses, Cottages, Labourers, and the Poor, which may seem, in some Mens Opinions, small Things, and of small Consideration, when, indeed, they are Matters of great Consequence and Importance.

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Now, Gentlemen, 'tis for the peaceable Preservation of this our excellent Government, by the due Execution of these our excellent Laws, especially those against Immorality and Profaneness, that we are this Day met together. And in this Service you bear a very principal Part; for altho' his Majesty's Commission be directed to Us, whereby We are authoriz'd to proceed *Secundum Leges & consuetudinem Regni*; yet according to the Laws of the Land, We that are Judges at this Time, cannot proceed without the Service and Ministry of those who are Jurors; without your Inquisition and Presentment, no Malefactor can be brought to his Answer. The Law of *England* has put into your Hands the very Key of Justice, in all criminal Causes; for, by your *Billa vera*, or your *Ignoramus*, you do open and shut all Proceedings in all Pleas of the Crown. Since therefore the Government hath reposed so great a Trust in You; and since You have taken so solemn an Oath for the Performance thereof, I doubt not but you will discharge it with that Care and Diligence, as becomes good Christians, and good Subjects. And so I dismiss You to the Business of the Day.

A

PROCLAMATION

For the Encouragement of Piety and
Virtue, and for Preventing and
Punishing of Vice, Prophaneness
and Immorality.

GEORGE R.

WE most Seriously and Religiously
Considering, That it is an In-
dispensable Duty on Us, to be
Careful, above all other things, to Pre-
serve and Advance the Honour and Ser-
vice of Almighty God, and to Discou-
rage and Suppress all Vice, Prophane-
ness, Debauchery and Immorality,
which are so highly Displeasing to God,
so great a Reproach to our Religion
and Government, and (by Means of the
frequent ill Examples of the Practicers
thereof) have so fatal a Tendency to
the Corruption of many of our Loving
Subjects, otherwise Religiously and Vir-
tuously Disposed, and which (if not time-
ly Remedied) may justly draw down the
Divine

Divine Vengeance on Us and Our King-
 doms: We also humbly Acknowledging,
 that we cannot expect the Blessing and
 Goodness of Almighty God (by whom
 Kings reign, and on which we entirely
 Rely) to make Our Reign happy and
 Prosperous to Our Self and Our Peo-
 ple, nor hope for the Divine Assistance to
 Deliver Us from the great and immi-
 nent Dangers which our Kingdoms, and
 the True Protestant Religion, Establish-
 ed among us, are in this present Juncture
 threatned with, without a Religious Ob-
 servance of God's Holy Laws: To the
 Intent therefore, that Religion, Piety,
 and Good Manners may (according to
 Our most Heartly Desire) Flourish and
 Increase under Our Administration and
 Government, We have thought fit (by
 the Advice of Our Privy Council) to
 issue this Our Royal Proclamation, and
 do hereby Declare Our Royal Purpose
 and Resolution to Discountenance and
 Punish all manner of Vice, Profane-
 ness and Immorality in all Persons of
 whatsoever Degree or Quality, within
 this Our Realm, and particularly in such
 as are employed near Our Royal Per-
 son; and that for the greater Encourage-
 ment of Religion and Morality, We
 will, upon all Occasions, Distinguish
 Persons of Piety and Virtue by Marks
 of Our Royal Favour. And We do Ex-
 pect and Require that all Persons of
 Honour, or in Place of Authority, will
 give good Example by their own Virtue

and Piety, and to their utmost contribute to the Discountenancing Persons of Dissolute and Debauched Lives, that they being by that Means reduced to Shame and Contempt, for their Loose and Evil Actions and Behaviour, may be thereby also Enforced the sooner to Reform their ill Habits and Practices, and that the visible Displeasure of Good Men towards them, may (as far as it is possible) supply what the Laws (probably) cannot altogether prevent. And we do hereby strictly Enjoin and Prohibit all Our Loving Subjects, of what Degree or Quality soever, from Playing on the Lord's Day, at Dice, Cards or any other Game whatsoever, either in Publick or private Houses, or other Place or Places whatsoever; and do hereby Require and Command them, and every of them Decently and Reverently to Attend the Worship of God on every Lord's Day, on Pain of Our highest Displeasure, and of being Proceeded against with the Utmost Rigour that may be by Law. And for the more effectual Reforming of all such Persons, who by Reason of their Dissolute Lives and Conversations are a Scandal to Our Kingdom, Our further Pleasure is, and We do hereby strictly Charge and Command all our Judges, Mayors, Sheriffs, Justices of the Peace, and all other Our Officers and Ministers, both Ecclesiastical and Civil, and all other Our Subjects whom it may Concern, to be very Vigilant and

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and Strit in the Discovery, and the
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 all Persons who shall be Guilty of Ex-
 cessive Drinking, Blaspheiny, Profane
 Swearing and Cursing, Lewdneis, Pro-
 phanation of the Lord's Day, or other
 Dissolute, Immoral or Disorderly Prac-
 tices; and that they take Care also Ef-
 fectually to Suppress all Bawdy-houses,
 Publick Gaming-houses and Places, and
 other Disorderly Houses, and to put in
 Execution the Statute made in the Nine
 and twentieth Year of the Reign of
 King Charles the Second, Intituled, An
 Act for the better Observation of the Lord's
 Day, commonly called Sunday. and also an
 Act of Parliament made in the Ninth
 Year of the Reign of King William the
 Third, Intituled, An Act for the more Ef-
 fectual Suppressing of Blasphemy and Pro-
 phaneness, and all other Laws now in
 Force for the Punishing and Suppressing
 any of the Vices aforesaid; and also to
 Suppress and Prevent all Gaming what-
 soever in Publick or Private Houses on
 the Lord's Day, and likewise that they
 take Effectual Care to Prevent all Per-
 sons keeping Taverns, Chocolate-houses,
 Coffee-houses, or other Publick Houses
 whatsoever, from Selling Wine, Choco-
 late, Coffee, Ale, Beer or other Liquors,
 or Receiving or Permitting Guests to be
 or remain in such their Houses in the
 Time of Divine Service on the Lord's
 Day, as they will answer it to Almighty
 God, and upon Pain of Our highest
 I 3 Displeasure.

Displeasure. And for the more Effectual Proceeding herein, We do hereby Direct and Command all Our Judges of Assize and Justices of the Peace, to give strict Charges at their respective Assizes and Sessions, for the due Prosecution and Punishment of all Persons that shall presume to Offend in any the kinds aforesaid, and also of all Persons that, contrary to their Duty, shall be Remiss or Negligent in putting the said Laws in Execution; and that they do at their respective Assizes and Quarter-Sessions of the Peace cause this Our Proclamation to be publickly Read in open Court immediately before the Charge is given. And We do hereby further Charge and Command every Minister in his respective Parish-Church or Chapel, to Read, or Cause to be Read, this Our Proclamation, at least Four times in every Year, immediately after Divine Service, and to incite and stir up their respective Auditories to the Practice of Piety and Virtue, and the Avoiding of all Immorality and Prophaneness. And to the end that all Vice and Debauchery may be prevented, and Religion and Virtue practised by all Officers, Private Soldiers, Mariners, and others who are Employed in Our Service, by Sea or Land, We do hereby strictly Charge and Command all Our Commanders and Officers whatsoever, That they do take Care to avoid all Prophaneness, Debauchery, and other Immoralities, and that by their own
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Good and Virtuous Lives and Conversions they do set good Examples to all such as are under their Care and Authority, and likewise take Care of and Inspect the Behaviour of all such as are under them, and to Punish all those who shall be Guilty of any the Offences aforesaid, as they will be Answerable for the Ill Consequences of their Neglect herein.

Given at our Court at *St. James's*,
the Day and Year &c.

God Save the KING.

Bedford J. An ORDER made at the General Quarter-Sessions of the Peace, holden at the Town of Bedford, for the County of Bedford, on the Day and Year, &c. before Sir James Astry, Kt. William Farrer, Jun. Esq; Lewis Monoux, Esq; William Livesay, Esq; Thomas Bromfall, Esq; John Harvy of Ikwelbury, Esq; John Granger, Esq; Samuel Rhodes, Esq; Matthew Denton, Esq; Matthew Dennis, Esq; Samuel Ongley, Esq; William Boteler, Esq; William Norcliffe, Esq; William Alston, Esq; Thomas Cheyne, Esq; John Harvy of Thurlough, Esq; Walter Cary, Esq; and other Justices of the Peace for the said County, at the said Sessions assembled, as followeth.

WHereas his Majesty has been graciously pleased to express his early Care of his People, in declaring his pious Concern for the Honour of God, the Advancement of Religion, and a general Reformation of Manners in this his Kingdom, by a gracious Proclamation, for the Encouragement of Piety and Virtue, and for the preventing and punishing Vice, Prophaneness and Immorality; and thereby commanding all the Laws against the Neg-

lest

' lest of the Worship and Service of God
 ' on the Lord's Day, Blasphemy, pro-
 ' phane Swearing, Lewdness, Bawdy-
 ' houses, publick Gaming-houses, and
 ' Places, and other Disorderly Houses,
 ' and all Dissolute, Immoral and Disor-
 ' derly Practices, be put in Execution, as
 ' a Means of procuring the Blessing of
 ' Almighty God, to make his Reign hap-
 ' py and prosperous to himself and his
 ' People.

' We therefore, his Majesty's Justices
 ' of the Peace for the said County, in
 ' Quarter Sessions assembled, do in obe-
 ' dience to the said Proclamation, and
 ' in Pursuance of our Duty, unanimouf-
 ' ly resolve, That we will put in the
 ' strictest Execution all the Laws against
 ' all Persons who shall be guilty of the
 ' Neglect of the Worship and Service of
 ' God on the Lord's Day, Blasphemy,
 ' prophane Swearing and Cursing, Pro-
 ' phanation of the Lord's Day, excessive
 ' Drinking, Lewdness, frequenting Baw-
 ' dy-houses, publick Gaming-houses and
 ' Places, or other Disorderly Houses, or
 ' any Dissolute, Immoral and Disorderly
 ' Practices ; and against all Officers and
 ' Persons, that contrary to their Duty,
 ' shall be remiss or negligent in putting
 ' the said Laws in Execution.

' And we do hereby Order, and strict-
 ' ly Require all High-Constables, Petty-
 ' Constables,

' Constables, Headboroughs, and all o-
 ' ther Officers, to be very diligent in
 ' making Search after such as shall offend
 ' in any of the Cases before-mention'd,
 ' and to bring all such as they shall find
 ' so offending, before some or one of his
 ' Majesty's Justices of the Peace for this
 ' County, that they may be dealt with
 ' according to Law.

' And to the End, that the Negligence,
 ' Partiality, Connivance or Under-hand
 ' Practices of any of the Officers afore-
 ' said, may not prevent the Discovery
 ' and due Punishment which the Laws
 ' have appointed to be inflicted on the
 ' said Offenders, and which we, the said
 ' Justices, are bound, and resolved to
 ' put in Execution; We do therefore re-
 ' commend it to all Persons within this
 ' County, who shall at any Time here-
 ' after have Knowledge of any such Neg-
 ' lect, Partiality, Connivance, or undue
 ' Practices of any Officer aforesaid, and
 ' desire that they will give timely Infor-
 ' mation thereof, to some or one of his
 ' Majesty's Justices of the Peace of the
 ' said County, against all which said Of-
 ' ficers so offending, we will proceed
 ' with the utmost Severity of Law, as
 ' Persons whose Unfaithfulness in their
 ' Office, is very mischievous to the Pub-
 ' lick Peace, and a great Encouragement
 ' of Vice and Immorality.

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' And to the End, that all Persons
 ' may take Notice of this our Order, it
 ' is further ordered by this Court, That
 ' the Clerk of the Peace of this County
 ' do forthwith cause a sufficient Num-
 ' ber of this our Order to be printed,
 ' and to send a competent Number of
 ' them to the High-Constables, who are
 ' hereby strictly required to cause some
 ' of them to be affixed upon all the
 ' Church Doors of each Parish within
 ' this County, and likewise forthwith to
 ' send the same to the Petty-Constables,
 ' Church - wardens, Overseers of the
 ' Poor, and Headboroughs of the respec-
 ' tive Parishes within the said County ;
 ' which said Officers are hereby charged
 ' and commanded, to go to each Publick
 ' House in their respective Divisions or
 ' Districts, and give the Keeper of every
 ' such Publick House, Notice of this
 ' our Order.

Johannes Firby *Clericus Pacis pro*
Com. Bedford, predict.

The

The Particular
PROCEEDINGS
 On TRIALS in the
Quarter-Sessions, &c.

AFTER the Charge is given, the Bills of Indictment being prepared, the Parties bound over (after first call'd upon by the Clerk of the Peace) are sworn to give Evidence; and then they are ordered to attend the Jury, whilst the Court considers of the Bill; unless the Matter be difficult, the Prosecution too violent, &c. when the Evidence is to be given in Court, that the Jury may receive proper Assistance.

When the Jury retire to consider of the Bill, they are on Examination of the Witnesses either to find the Bill, or bring it in *Ignoramus*: If they find the Bill, the Goaler is call'd upon to set his Prisoner at the Bar; and the Prisoner being brought to the Bar, the Cryer says
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to him, *A. B.* hold up thy Hand, thou standest Indicted by the Name of *A. B.* for, &c. (reciting the Crime laid in the Indictment) How sayst thou, Art thou guilty of this Felony, &c. whereof thou standest Indicted, or Not Guilty? If the Prisoner says Guilty, his Confession is immediately Recorded, and he's set aside 'till Judgment: If he pleads Not Guilty, (which is the common Plea) the Clerk says, *Cul. prit.* How wilt thou be try'd? And the Offender answers, By God and his Country. The Plea, Not Guilty, is likewise to be Recorded; and in this Manner, all the Prisoners are to be arraign'd.

This done, the Prosecutors are to attend, and the Jury to be call'd upon their Panel thus:

You good Men, that are return'd and Impanell'd in this Court, to try the Issue joyn'd between our Sovereign Lord the King, and the Prisoners at the Bar, answer to your Names: Then call them over, and a full Jury appearing, make Proclamation, If any can inform the King's Attorney in this Court of any Treason, Murder, Felony, or other Crime committed by *A. B. &c.* the Prisoners at the Bar, let them come forth.

Then say to the Prisoner, the Persons that you have now heard call'd, are to pass upon your Trial of Life and
Death,

Death, &c. If you intend to challenge any of them, you are to do it as they come to the Book, and before they are sworn.

Then swear the Jury, (bidding them look upon the Prisoner) in this Manner :

Oath of the Jury.

YOU shall well and truly Try, and Deliverance make between our Sovereign Lord the King, and the Prisoner at the Bar, whom you have deliver'd in Charge ; You shall true Verdict make, and bring in, upon Enquiry into the Crime mention'd in the Indictment, according to the Evidence that shall be given you.

So help you God.

When this is done, you are to acquaint the Jury with the particular Crimes of which the Prisoner stands Indicted, by reciting the Indictment ; and after that, the Clerk of the Peace is to say, To which Indictment he hath pleaded, Not Guilty, and for Trial hath put himself upon God and his Country ; so that your Charge is to enquire whether he be Guilty of the Felony, &c. whereof he stands indicted, or Not ? If you find him Guilty, you are to make Enquiry into what Goods and Chattels, &c. he had at the Time that the Felony was

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was committed, or at any Time since. If you find him Not Guilty, you shall enquire whether he did fly for it; and if you find he fled for it, you shall enquire what Goods and Chattels he had at the Time of his Flight; but if you find him Not Guilty, and that he did not fly for it, you shall then say no more.

You are then to call upon the Witnesses, and swear them thus :

Oath of the Witnesses.

THE Evidence that you shall give on the Behalf of our Sovereign Lord the King, against A. B. Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth.

So help you God.

The Evidence being given, you are to set another Prisoner at the Bar, and say to the Jury, You are also to understand that C. D. stands likewise Indicted before you at this Time, For that he on &c. last, stole &c. (reciting the Substance of the Indictment) for which he hath been arraign'd, and pleaded thereto Not Guilty; and for his Trial hath put himself upon God and his Country; you are therefore to Enquire of him as of your first Prisoner, (but this is understood.

derstood where the Offence is of the same Degree) and hear your Evidence.

After all the Evidence given, the Bailiff is to be sworn to keep the Jury.

Oath of the Bailiff to keep the Jury.

YOU shall Swear that you will keep this Jury without Meat, Drink, Fire, or Candle, 'till they shall bring in their Verdict; you shall permit no Persons to speak to them, neither shall you speak to them yourself, any further than to ask whether they are agreed.

So help you God.

Thus when all Things are given in Charge, the Jury withdraw to their Room, and consider of the Matter; when they are agreed, and return'd within or near the Bar, the Prisoners are brought forth, and the Jury call'd over; who all appearing, the Prisoner is set to the Bar, and the Clerk of the Peace says, Look upon the Prisoner, you Gentlemen of the Jury; How say you? Is *A. B.* Guilty of the Felony, &c. whereof he stands Indicted, or Not Guilty?

If the Jury say *Guilty*, you are to record it, and bid the Prisoner be taken away; If they say *Not Guilty*, you are to bid him down upon his Knees. Then say, Goaler, set *C. D.* to the Bar, and do

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do as before ; and when the Verdict is given of them all, say, My Masters of the Jury, hearken to your Verdict as the Court hath Recorded it : You say *A. B.* is Not Guilty of the Felony, &c. whereof he stands Indicted ; You say *C. D.* is Guilty of the Felony, &c. whereof he stands Indicted ; and so of the rest in their Order.

Then cause Proclamation to be made, and say, All manner of Persons keep Silence while Sentence is given, upon Pain of Imprisonment. Then set the Prisoners to the Bar, and pronounce Sentence against them accordingly.

This is the Manner of proceeding against Criminals in the Quarter Sessions, &c. And the Court is to advise the Prisoner for his Good, not taking Advantage too strictly against him : And the Court may also be informed from a By-stander, especially a Man of the Law, offering any Thing as *Amicus Curiae*, relating to the Trial.

A Defendant in any Cause is to have a Copy of the Indictment before he pleads ; and if there be any Insufficiency, he may plead it, whereupon the Indictment will be quashed, or the Defendant may traverse 'till the next Sessions.

If no Bill be found, the Indictment will be quashed of Course.

Bills of INDICTMENT for Crimes, and PRESENTMENTS of Furies.

An Indictment for Petty Treason.

FU R. &c. quod A. B. de &c. die &c.
in Domo C. D. apud &c. in Com. pred.
vi & armis, viz. cum &c. quem idem A. B.
adtunc & ibid. in manu sua dextra tenuit
in & super pred. C. D. adtunc Magistrum
suum & in pace dict. Dom. Reg. existen.
voluntar. & ex malitia sua præcogitat. in-
sult. fec. & præfat. C. D. adtunc Magi-
strum suum adtunc & ibid. cum &c. præ-
dict. felonice & proditorie apud &c. præd.
in Com. pred. percussit & vulneravit & ei-
dem C. D. apud &c. præd. in Com. præd.
felonice proditorie & ex malitia sua præ-
cogitat. cum &c. præd. unum vulnus mor-
tale in & super dextram partem ventris
sui dedit longitudinis &c. profunditatis &c.
de quo quidem vulnere mortali idem C. D.
a præd. die &c. Anno supradict. usque &c.
diem &c. prox. sequen. apud &c. præd.
languebat & languidus vixit quo quidem
die &c. Anno supradict. præd. C. D. apud
&c. præd. in Com. præd. de vulnere mor-
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tali præd. obiit Et sic jur. præd. super Sacrament. suum præd. dicunt quod præfat. A. B. præd. die &c. apud &c. in Com. præd. præfat. C. D. modo & forma præd. ex malitia sua præcogitat. voluntar. felonice & proditorie interfecit & murdravit contra pacem, &c.

An Indictment for Murder.

JUR. &c. quod A. B. nuper de &c. in Com. præd. Deum præoculis non habens sed instigatione Diaboli motus & seductus, die &c. circa horam decimam post Meridiem in Nocte ejusdem Diei, apud &c. præd. in Com. præd. vi & armis in & super quendam C. D. in pace Dei & dict. Domini Regis adtunc & ibidem existen. insultum fecit & prædict. A. B. cum Gladio &c. ad valenc. &c. quem idem A. B. in manu sua dextra adtunc & ibidem extract. habuit & tenuit felonice voluntarie & ex malitia sua præcogitata præd. C. D. apud &c. præd. in Com. præd. percussit & vulneravit & eidem C. D. apud &c. præd. in Com. præd. felonice & ex malitia sua præcogitat. cum Gladio &c. præd. unum vulnus mortale in & super dextram partem dedit longitudinis &c. & profunditatis &c. quo quidem vulnere mortali idem C. D. instanter obiit, Et sic jur. præd. super Sacram. suum præd. dicunt quod præd. A. B. præd. die &c. Anno supradiet. apud &c. præd. in Com. præd. præfat. C. D.

*mōdo & forma pred. ex malitia sua pre-co-
gitat. felonice & voluntarie interfecit &
murdravit, contra pacem dict. Dom. Regis
Coron, &c.*

An Indictment for Felony.

JU R. &c. quod A. B. nuper de &c. in
Com. &c. apud &c. in Com. pred. vi
& armis &c. Clausum cujusdam C. D. fre-
git & intravit & unum Equum coloris ni-
gri pretii sex Libr. de Bonis & Catallis
pred. C. D. adtunc & ibidem scilt. apud
&c. pred. in Com. pred. invent. felonice
furat. fuit cepit & effugavit, contra pacem
dict. Dom. Reg. nunc Coron. Dignitatem &c.
(If an Accessary, say) Et quod quidam
E. F. nuper de &c. in Com. pred. die &c.
ante feloniam pred. in forma pred. fact. &
perpetrat. apud &c. pred. maliciose & felo-
nice consuluit mandavit, procuravit, inci-
tavit & abettavit, pred. A. B. ad feloniam
pred. faciend. & perpetrand. Or, Et quod
E. F. de &c. post feloniam pred. in forma
pred. fact. & perpetrat. ipsum A. B. apud
&c. in Com. pred. die &c. felonice recep-
tavit & confortavit, contra pacem, &c.

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An Indictment for a Riot.

FUR. &c. quod A. B. nuper de &c. in
 Com. pred. C. D. nuper de &c. & E. F.
 nuper de &c. die & Anno &c. vi & ar-
 mis &c. Baculis, Gladiis, &c. Riotosè &
 illicite seipsos ad perturband. pacem dict.
 Dom. Reg. nunc apud &c. pred. in Com.
 pred. assemblerunt & congregaverunt &
 sic assemblat. & congregat. existen. adtunc
 & ibid. in & super quendam G. H. in pace
 Dei & dict. Dom. Regis adtunc similiter ex-
 isten. insultum fecer. & ipsu. G. H. adtunc
 & ibid. verberaverunt, vulneraverunt &
 maletractaverunt, & alia enormia ei intu-
 lerunt ad grave damnum ipsius G. H. ac
 contra pacem dict. Dom. Regis Coron. &
 Dignitat. suas necnon contra formam Stat.
 in hujusmodi casu edit. & provis.

An Indictment for an Assault.

FUR. &c. quod A. B. de &c. in Com.
 pred. die & Anno &c. apud &c. in Com.
 pred. in & super C. D. in pace Dei & dict.
 Dom. Regis adtunc & ibid. existen. vi &
 armis insultum fecit & ipsum C. D. adtunc
 & ibid. verberavit, vulneravit, & male
 tractavit ita quod de vita ejus desperabatur
 & alia Enormia ei adtunc & ibid. intulit
 ad grave damnum ipsius C. D. & contra
 pacem, &c.

If for an *Affray*, say, A. B. C. D. &c. vi & Armis viz. cum Gladiis, &c. tal. die &c. Arraiat. & illicite congregat. insultum & Affraiam fecerunt in terrorem & perturbationem diversor. subditorum dicti Dom. Regis &c. Et in malum Exemplum &c. contra pacem, &c.

An Indictment for keeping of an Alehouse.

MEMORAND. quod ad General. Session. Pacis Domini Regis tent. apud &c. in Com. &c. die & anno &c. coram A. B. Mil. C. D. E. F. Ar. &c. Justic. Domini Regis ad pacem infra Com. pred. conservand. necnon ad divers. felonias transgr. & alia Malefacta in Com. predict. perpetrata. audiend. & terminand. assign. per Sacramentum G. H. J. K. L. M. &c. proborum & legalium hominum Com. predict. adtunc & ibidem furat. Onerat. ad Inquirend. pro dicto Domino Rege presentat. quod J. B. de &c. in Com. pred. die & anno &c. & continue postea usque diem &c. voluntarie, obstinate & sine Licentia, admissione vel allocatione duorum Justiciariorum dicti Dom. Regis, ad pacem infra villam &c. conservand. assign. assumpsit super se custodire & custodivit unam communem Popinam (anglice a common Tippling-House) & in eadem ibid. totum tempus supradict. communiter

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vis. (anglice Ale) & al. potum diversis
ligeis & subditie dicti Dom. Regis Fur.
predict. ignot. contra formam Statut. &c.
ac contra pacem &c.

An Indictment of a Bawdy-House.

FUR. &c. quod A. B. de &c. die & an-
no &c. & diversis temporibus antea &
postea apud &c. tenent & custodiunt, occu-
pant, & frequentant in domibus suis ibid.
communia Hospitia, Lupan. Luxur. & For-
nicacon. Et permittunt Homines & alias
Personas suspectas, & non boni gestus nec
Famae, cum meretricibus carnaliter incubare,
ad magnum nocumentum totius Populi Do-
mini Regis, ibid. prope commorantium, &
in malum Exemplum omnium aliorum in tali
casu delinquen. ac contra Pacem, &c.

An Indictment for keeping a Gaming- House.

FUR. &c. quod A. B. de &c. in Com.
pred. die & anno &c. ac diversis aliis
diebus & vicibus ante hujus Inquisitionis
commune Hospitium apud &c. in Com. pred.
manutenebat & adhuc manutenet & ibid.
divers. Person. suspect. cum pictis Chartis
& aleis illicite ludere permittebat tam in
Die quam in Nocte post horas debitas & le-
gitimas

*gitimas ad gravamen Inhabitantium ibid.
& in malum Exemplum alior. dict. Dom.
Reg. subditorum, contra formam Statut. &c.
& contra Pacem, &c.*

An Indictment against a Person for
Drunkenness.

¶ *U R. &c. quod A. B. nuper de &c. die
& Anno &c. & multis diebus & vici-
bus tam antea quam postea apud &c. in
Com. pred. & alibi in diversis aliis locis
infra Com. pred. fuit & adhuc est commu-
nis Poculator (anglice Drunkard) & com-
munis Perturbator pacis dict. Dom. Regis in
malum Exemplum aliorum subditorum dict.
Dom. Reg. & contra Pacem, &c.*

A General

A General Presentment of many Offences, by a Grand Jury.

*At the General Quarter Sessions of the
Peace holden at &c. for the County of
&c. On the Day and Year &c. We
the Grand Jury, whose Names are
hereunder written, sworn to serve on
the Behalf of our Sovereign Lord
the King, for the Body of the said
County, Do Present the several Per-
sons and Offences following.*

1st, **W**E Present, That *A. B.* of *&c.* <sup>*Masque-
rades.*</sup> in the County aforesaid, on
&c. last past, and at several other Times,
hath allowed and permitted divers Per-
sons to come to his House late in the
Night Time, in Masques and other dis-
guised Habits, who instead of making
use of them for Dancing and other in-
nocent Diversions, have made them coun-
tenance Assignations of Vice, and there-
by drawn in many young Persons of
both Sexes to the greatest Debaucheries,
the Consequence of which, hath been
Ruin and Destruction, (by the Opportu-
nity

nity of the Place) and some of them even to the detestable Sin of *Sodomy*; Wherefore we Present the said *A. B.* and his scandalous House, in order to be suppressed.

*Gaming
Houses.*

2dly, We Present, That *C. D.* of *&c.* in this County, does at this Time keep, and for the Space of one Month past, hath kept an unlawful Gaming House in the said Parish of *&c.* And hath permitted Servants and Apprentices to play at Cards, Dice, and other Games, prohibited by Law; and also Gamesters, Sharpers, and others, who live idly, without any visible Estates, and whose Business and Study it is to strip young Gentlemen of their Estates and Fortunes, whereby many Persons and Families are totally ruined, and will continue so to be, until the said House is put down.

*Bawdy
Houses.*

3dly, We Present, That *E. F.* of *&c.* in the County aforesaid, a Person of ill Fame, keeps and maintains a common Bawdy-House, and suffers Men and Women to commit Fornication, and all manner of shameful Lewdness therein, to the great Corruption of the Manners and Principles of our Youth, and Encouragement of Vice and Immorality, (for which these Houses are Nurseries) and the Furtherance of Whores, Thieves, and Pickpockets; who not only Injure the Persons of those with whom they converse,

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converse, by a Communication of the most nauseous Diseases, but likewise Rob them of their Money, to the very great Scandal of a civilized Kingdom.

4thly, We Present, That G. H. of *Co.* on *Co.* last, and at several Times since, *Ale House.* hath kept an Ale-House or Tippling-House, in the said Parish of *Co.* And sold Ale, Beer, and other vendible Liquors, to several Persons of the same Parish, not having a Licence for his doing thereof according to Law; to the great Disturbance of the Neighbourhood there, whereby the Peace hath been frequently broken, and great Violences committed by disorderly Persons.

5thly, We Present, That J. K. of *Co.* Vintner and Victualler, keeps and maintains a disorderly House in the said Parish of *Co.* and entertains Thieves, Robbers, and Pickpockets, Beggars, and Vagabonds; who, to support their Extravagancies and Idle Course of Life, continue their Thieving and Robberies, Begging and Impositions upon the People, contrary to the known Laws of the Land. *Disorderly House.*

6thly, We Present, That on *Co.* last, *A. B. C. D. E. F. Co.* all of *Co.* in a tumultuous Manner assembled together at *Co.* in the said County of *Co.* and then and there assaulted and wounded G. H. of *Co.* to the great Injury of the said G. H. *Rioters.*

G. H. and the Terror and Disturbance of divers of his Majesty's good and peaceable Subjects, and evil Example to others to commit the like Violences.

Stocks, &c.
out of Re-
pair. 7thly, We Present *L. M.* Constable of the Parish of *&c.* in the said County, for not keeping in due Repair a Pair of Stocks in the said Parish, for the Securing and Punishing Idle and Disorderly Persons. We also Present the said *L. M.* for a Neglect of Duty in Apprehending Rogues, Vagabonds, and Beggars, as the Statute directs.

Nuances. 8thly, We Present, That *N. O.* of *&c.* hath lately carry'd stinking Carcasses, Carrion, and other Filth, into the Highway of *&c.* to the great Nuisance of the said Parish, and Annoyance of the King's Subjects, who travel that Way.

Peace-
breakers. 9thly, We Present, That *P. R.* of *&c.* and *S. T.* of *&c.* are very Idle and Disorderly Persons, and common Disturbers of the Peace.



<i>A. L.</i>	<i>T. M.</i>
<i>T. D.</i>	<i>K. E.</i>
<i>L. G.</i>	<i>J. W.</i>
<i>J. R.</i>	<i>L. T.</i>
<i>T. A.</i>	<i>F. J.</i>
<i>M. C.</i>	<i>G. L. &c.</i>

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Folio's.

I. THE Tryal of *John Hampden, Esq;* (of *Stoke Mandeville* in the County of *Bucks*) in the great Case of Ship-Money, between his Majesty *K. Charles the 1st*, and that Gentleman; wherein are inserted the whole Record, in *Latin* and *English*, the several Arguments of Council learned in the Law on both Sides in that most Remarkable Case at the Bar; with the Opinions of all the Judges on the Bench in the Exchequer Chamber, &c.

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